

# AMENDED PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, David L. Rouen legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve (1) The validity of the extension of February 9, 1979 of the Special Exception; (2) The interpretation that Racquetball is synonymous and the same as Tennis; (3) To allow an amendment to the Special Exception to allow Racquetball in lieu of Tennis; (4) To allow the right to amend the Plan for the Special Exception that was granted, for the reduction of square footage of the structure.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser David L. Rouen Legal Owner  
Address 2410 Bra. Marr Avenue  
Catonsville, Md. 21228  
Petitioner's Attorney S. Eric DiNenna  
Suite 205 Alex. Brown Bldg.  
Towson, Maryland 21204  
825-1630

ORDERED By the Zoning Commissioner of Baltimore County, this 25th day of January, 1980, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 28th day of February, 1980, at 10:45 o'clock A.M.

[Signature]  
Zoning Commissioner of Baltimore County

(over)

# PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, David L. Rouen legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the Special Exception Case No. 76-260-X to allow for the reduction of square footage of the structure to house tennis facility and/or racquetball facility.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser David L. Rouen Legal Owner  
Address 2410 Bra. Marr Avenue  
Baltimore, Maryland 21228  
Petitioner's Attorney S. Eric DiNenna  
Suite 205 Alex. Brown Bldg.  
Towson, Md. 21204 825-1630

ORDERED By the Zoning Commissioner of Baltimore County, this 25th day of January, 1980, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 28th day of February, 1980, at 10:45 o'clock A.M.

[Signature]  
Zoning Commissioner of Baltimore County

(over)

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
NW/S of Frederick Rd., 149.15' : OF BALTIMORE COUNTY  
SW of Monmouth Rd., 1st District  
DAVID L. ROUEN, Petitioner : Case No. 80- 167-SPH

## ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman John W. Hession, III  
Peter Max Zimmerman John W. Hession, III  
Dep. People's Counsel People's Counsel for Baltimore County  
County Office Building  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 20th day of February, 1980, a copy of the foregoing Order was mailed to S. Eric DiNenna, Esquire, Suite 205, Alex. Brown Building, Towson, Maryland 21204, Attorney for Petitioner.

John W. Hession, III  
John W. Hession, III

## BALTIMORE COUNTY

## ZONING PLANS

## ADVISORY COMMITTEE



## PETITION AND SITE PLAN

## EVALUATION COMMENTS

## BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 1, 1980

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

cc: Nicholas B. Commodari  
Chairman

MEMBERS  
Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

S. Eric DiNenna, Esquire  
Suite 205  
Alex. Brown Building  
Towson, Maryland 21204

RE: Case No. 80-167 - SPH  
Item No. 86  
David L. Rouen  
Special Hearing Petition

Dear Mr. DiNenna:

Enclosed is a revised comment from the State Highway Administration on the above referenced matter. If the petition is eventually granted, the site plan must reflect this comment at the time of application for the required building permits.

Very truly yours,

Nicholas B. Commodari  
NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:hk

Enclosures

cc: Spellman, Larson & Assoc., Inc.  
105 W. Chesapeake Ave.  
Towson, Md. 21204



## Maryland Department of Transportation

State Highway Administration

James J. O'Donnell  
Secretary  
M. S. Callender  
Administrator

March 25, 1980

Mr. William E. Hammond  
Zoning Commissioner  
County Office Building  
Towson, Md. 21204

Attention: Mr. N. Commodari

Re: Z.A.C. Meeting, Nov. 6, 1979  
ITEM: 86  
Revised Plan  
Catonsville Racquet Club  
NW/S Frederick Road  
Route 144  
149.15' SW Monmouth Rd.  
Revision of 1-18-80

Dear Mr. Hammond:

On review of this plan, additional revisions must be made. There must be curb and gutter shown on the plan for the entire frontage. A tangent distance of 5' is to be shown between the NW property line and the beginning of the radius return. The radii at the entrance are to be 10'. A standard concrete curb is to be constructed between the curb and gutter at the edge of roadway and the parking lot.

Very truly yours,

Charles Lee, Chief  
Bureau of Engineering  
Access Permits

George Wittman  
By: George Wittman

CL:GW:mah

## BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 15, 1980

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

cc: Nicholas B. Commodari  
Chairman

MEMBERS  
Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

S. Eric DiNenna, Esquire  
Suite 205, Alex. Brown Building  
Towson, Maryland 21204

RE: Item No. 86  
Petitioner - David L. Rouen  
Special Hearing Petition

Dear Mr. DiNenna:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on-site field inspection of the property. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

This currently vacant D.R. 5.5 zoned property is located on the north side of Frederick Road, directly opposite its intersection with Balfred Road, in the 1st Election District. Contiguous properties are improved with individual dwellings to the northeast and northwest, while a Knights of Columbus Hall exists directly opposite this site on Frederick Road.

This property was the subject of a previous zoning hearing (Case No. 76-260-X) in which a Special Exception for a tennis barn was granted on November 23, 1976. Subsequent to this, the Special Exception was extended until a date expiring on November 23, 1981. In order to determine whether this previous Special Exception is still valid and to amend the site plan to allow a racquetball facility in lieu of tennis, this Special Hearing is required.

As indicated in our previous conversations with you and your surveyor, revised plans reflecting all the enclosed comments were to be submitted to this office. However, it should be noted that, at the time of this writing, the revised plans have not yet been submitted.

Item No. 86 - David L. Rouen  
Page Two  
February 15, 1980

Prior to the scheduled hearing date, these revised plans must be submitted. In keeping with this, particular attention should be afforded to the comments of the Department of Permits and Licenses and the Fire Department. If there are any questions concerning the comments of the former department, you may contact Mr. Ted Burnham at 494-3387.

Enclosed are all comments submitted from the Committee to this office. The remaining members feel that no comment was warranted. This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30 nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,

Nicholas B. Commodari  
NICHOLAS B. COMMODARI  
Chairman  
Zoning Plans Advisory Committee

NBC:sf

Enclosures

cc: Spellman, Larson & Assoc., Inc.  
Suite 110, Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

ORDER RECEIVED FOR FILING

DATE May 22, 1980  
BY [Signature]  
ADMINISTRATIVE SERVICES

DAVID L. ROUEN  
NW/S Frederick Rd., 149.15' SW of Monmouth Rd.  
Catonsville, Md. 21228

80-167-SPH

2/10/80  
10:58 AM





BALTIMORE COUNTY  
DEPARTMENT OF PUBLIC WORKS  
TOWSON, MARYLAND 21204

December 11, 1979

Mr. William E. Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item #86 (1979-1980)  
Property Owner: David L. Rouen  
N/W Frederick Rd. 149.15' S/W Monmouth Rd.  
Existing Zoning: DR 5.5  
Proposed Zoning: Special Hearing to amend Special  
Exception No. 76-260X (Item No. 195, 1975-1976) to allow  
for the reduction of square footage of the structure to  
house a tennis facility and/or racquetball facility.  
Acres: 4.053 District: 1st

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

The comments which were supplied in conjunction with the Zoning Advisory Committee review of this property for Item 195 (1975-1976), 76-260X, remain valid, applicable and are referred to for your consideration; the submitted plan shall be revised accordingly.

It is anticipated that no sanitary sewer connection allocations will be available for projects within the Patapsco drainage basin until the improvements at the Patapsco Pumping Station are completed, which is expected to be in March 1982.

Very truly yours,

*Ellsworth N. Diver, P.E.*  
ELLSWORTH N. DIVER, P.E.  
Chief, Bureau of Engineering

END:RAM:FWR:ss

cc: J. Wimbley  
J. Somers  
W. Munchel

H-SE Key Sheet  
12 SW 28 & 29 Pos. Sheets  
SW 3 G & H Topo  
100 Tax Map

Baltimore County, Maryland  
Department Of Public Works  
COUNTY OFFICE BUILDING  
TOWSON, MARYLND 21204

Bureau of Engineering  
ELLSWORTH N. DIVER, P. E. CHIEF

May 4, 1976

Mr. S. Eric DiNanna  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item #195 (1975-1976)  
Property Owner: Roscon Land Leasing Corp.  
N/S Frederick Rd., 150' W. Monmouth Rd.  
Existing Zoning: DR-CMS  
Proposed Zoning: Special Exception for community  
building, swimming pool, or other land use devoted  
to civic, social, recreational and educational  
activities (tennis barn and outdoor courts).  
Acres: 4.053 District: 1st

Dear Mr. DiNanna:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

The submitted plan must be revised to indicate the present locations of the water courses traversing this site the head and end walls of the 60-inch drain crossing Frederick Road, the metal (cast iron?) pipe suspended above the waterway at the upstream end of this drain and the location of Frederick Road paving and guard rails thereto; the locations of public water mains in Rollingbrook Way and Frederick Road; and the portions of Lots 119 thru 123 of the recorded subdivision of Stonewall Park (W.P.C. 7, Folio 18) which comprise the northwesterly part of this site and the ownership of adjacent properties are also to be indicated on the revised plan.

Highways:

Frederick Road (Md. 144) is a State Road; therefore, all improvements, intersections, entrances and drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration. Any utility construction within the State Road right-of-way will be subject to the standards, specifications and approval of the State in addition to those of Baltimore County.

Rollingbrook Way is an existing improved residential County road; vehicular access is not to be provided this site therefrom. Highway improvements consisting of a standard road termination including any necessary highway right-of-way widening and reversible easements for slopes will be required in connection with any grading or building permit application. Further information may be obtained from the Baltimore County Bureau of Engineering. The submitted plan must be revised accordingly.

Item #195 (1975-1976)

Property Owner: Roscon Land Leasing Corp.

Page 2

May 4, 1976

Highways (Cont'd)

The entrance locations are subject to the approval of the Department of Traffic Engineering.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Drainage studies, sediment control drawings and storm water management drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

Thistle Run, or tributaries thereto, traverse this site.

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

Open stream drainage requires a drainage reservation or easement of sufficient width to cover the flood plain of a 100-year design storm. However, a minimum width of 50 feet is required. The submitted plan should be revised to indicate the total tributary drainage area, in acres, and the limits of the 100-year flood plain.

Any grading, filling, stream relocation, etc., will also be subject to requirements and approval by the Maryland State Department of Natural Resources in event that the total tributary drainage area comprises 400 or more acres.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Water:

There is an existing 8-inch public water main in Rollingbrook Way (Drawing #55-1112, File 3). A public water main extension may be required along the Frederick Road frontage of this site from the 12-inch public water main in Frederick Road (Drawing #55-1113, File 3). Additional fire hydrant protection is required in the vicinity.

Item #195 (1975-1976)

Property Owner: Roscon Land Leasing Corp.

Page 3

May 4, 1976

Highways (Cont'd)

There is an 8-inch public sanitary sewer along the Frederick Road frontage of this property (Drawing #55-1114, File 1). There is also public 12-inch sanitary sewerage traversing the site within a 10-foot utility easement (Drawing #52-0933, File 1). The Petitioner is advised that connection to either of these sanitary sewer lines is critical in regard to specific locations and invert elevations, due to stream inverts, concrete encasements, etc. The Petitioner will be responsible for a sanitary sewer study to determine the adequacy of the Frederick Road Sewage Pumping Station No. 2 and its force main relative to his proposed design sewage flows (both average and peak flows) in gallons per day.

Generally, encroachment by construction of any structure, including footings, is not permitted within County utility easements and rights-of-way. The Petitioner is responsible for a recorded agreement between the Petitioner, its heirs, successors and assigns and Baltimore County, setting forth the Petitioner's responsibilities and saving Baltimore County harmless from any/all damages or claims in connection with the construction, maintenance and use of the tennis courts over the public utility easement and sanitary sewer.

It must be noted that existing sanitary sewer manhole covers are not to be covered by any material. The Petitioner would be entirely responsible for the costs of any sanitary sewer relocation. This property is tributary to the Patapsco Sewage System, subject to State Health Department imposed restrictions.

Very truly yours,

*Ellsworth N. Diver, P.E.*  
ELLSWORTH N. DIVER, P.E.  
Chief, Bureau of Engineering

END:RAM:FWR:ss

cc: S. Ballestri  
J. Loos  
J. Wimbley  
D. Gyles  
W. Munchel

H-SE Key Sheet  
12 SW 28 & 29 Pos. Sheets  
SW 3 G & H Topo  
100 Tax Map



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3211

JOHN D. SEYFFERT  
DIRECTOR

February 5, 1980

Mr. William Hammond, Zoning Commissioner  
Zoning Advisory Committee  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #86, Zoning Advisory Committee Meeting, November 6, 1979, are as follows:

Property Owner: David L. Rouen  
Location: NW/S Frederick Road 149.15' SW Monmouth Road  
Existing Zoning: D.R. 5.5  
Proposed Zoning: Special Hearing to amend Special Exception No. 76-260-X (Item No. 195, 1975-76) to allow for the reduction of square footage of the structure to house a tennis facility and/or racquetball facility.  
Acres: 4.053  
District: 1st

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

Screening must be provided along Frederick Road.

Very truly yours,

*John L. Wimbley*  
John L. Wimbley  
Planner III  
Current Planning and Development



baltimore county  
department of traffic engineering  
TOWSON, MARYLAND 21204  
(301) 494-3550

STEPHEN E. COLLINS  
DIRECTOR

January 15, 1980

Mr. William Hammond  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Item No. 86 - ZAC - November 6, 1979  
Property Owner: David L. Rouen  
Location: NW/S Frederick Rd. 149.15' SW Monmouth Rd.  
Existing Zoning: D.R. 5.5  
Proposed Zoning: Special Hearing to amend Special Exception No. 76-260-X (Item No. 195; 1975-76) to allow for the reduction of square footage of the structure to house a tennis facility and/or racquetball facility.  
Acres: 4.053  
District: 1st

Dear Mr. Hammond:

No traffic problems are anticipated by the request to reduce the square footage of the proposed structure.

Very truly yours,

*Michael S. Flanigan*  
Michael S. Flanigan  
Engineer Associate II

MSF/hmd



Maryland Department of Transportation

State Highway Administration

James J. O'Donnell  
Secretary  
M. S. Caltrider  
Administrator

November 20, 1979

Mr. William E. Hammond  
Zoning Commissioner  
County Office Bldg.  
Towson, Md. 21204

Attention: Mr. N. Commodari

Re: Z.A.C. Meeting, Nov. 6, 1979  
ITEM: 86.  
Property Owner: David L. Rouen  
Location: NW/S Frederick Rd. (Route 1-4) 149.15' SW Monmouth Rd.  
Existing Zoning: D.R. 5.5  
Proposed Zoning: Special Hearing to amend Special Exception No. 76-260-X (Item No. 195; 1975-76) to allow for the reduction of square footage of the structure to house a tennis facility and/or racquetball facility.  
Acres: 4.053  
District: 1st

Dear Mr. Hammond:

There is an error on the vicinity map. Balfred Road is noted as being to the east of the site. This is actually Morerick Avenue. Balfred Road is directly opposite the subject site. The proposed entrance location is undesirable because of the close proximity to Balfred Road. The entrance should be located directly opposite at the west property line. An alternative would be to locate the entrance near the east property line. The minimum entrance width is 25'. A 30' width is strongly recommended.

The proposed right of way for Frederick Road is 80' and not 70' as indicated on the plan.

The frontage of the site must be improved with paving and curb and gutter. The curb is to be 24' from the existing centerline of Frederick Road.

Mr. W. E. Hammond (Cont.'d.)

There is a deep drainage ditch paralleling the highway that must be closed with a pipe of suitable size. A storm drain inlet may be required. Storm water management will be required.

The plan must be revised prior to a hearing date being assigned.

Very truly yours,

Charles Lee, Chief  
Bureau of Engineering  
Access Permits

CL:JEM:vrd

By: John E. Meyer



December 12, 1979

Mr. William E. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #86, Zoning Advisory Committee Meeting of November 6, 1979, are as follows:

Property Owner: David L. Rouen  
Location: NW/8 Frederick Rd. 149.15' SW Monmouth Rd.  
Existing Zoning: D.R. 5.5  
Proposed Zoning: Special Hearing to amend Special Exception No. 76-260-X (Item No. 195; 1975-76) to allow for the reduction of square footage of the structure to house a tennis facility and/or racquetball facility.  
Acres: 4.053  
District: 1st

Metropolitan water and sewer are available.

If a food service facility is proposed, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, Baltimore County Department of Health, for review and approval prior to construction.

Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 494-3775, to obtain requirements for such installation/s before work begins.

Very truly yours,  
*Ian J. Forrest*  
Ian J. Forrest, Director  
BUREAU OF ENVIRONMENTAL SERVICES

LJF/fthg

cc: J. A. Butcher

W. L. Phillips

Paul H. Reincke  
CHIEF

November 2, 1979

Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: Mr. William Hammond, Zoning Commissioner  
Zoning Advisory Committee

Re: Property Owner David L. Rouen

Location: NW/8 Frederick Rd. 149.15' SW Monmouth Rd.

Item No. 86 Zoning Agenda: Meeting of 11/6/79

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

- (x) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works. Fire hydrants at 300 foot intervals along Frederick Road.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_ EXCEEDS the maximum allowed by the Fire Department.
- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code" 1976 Edition prior to occupancy.
- ( ) 6. Site plans are approved as drawn.
- ( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: *[Signature]* Noted and Approved: *[Signature]*  
Planning Group Fire Prevention Bureau  
Special Inspection Division

JOHN D. SEYFFERT  
DIRECTOR

November 14, 1979

Mr. William E. Hammond, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #86 Zoning Advisory Committee Meeting, November 6, 1979 are as follows:

Property Owner: David L. Rouen  
Location: NW/8 Frederick Rd. 149.15' SW Monmouth Rd.  
Existing Zoning: D.R. 5.5  
Proposed Zoning: Special Hearing to amend Special Exception No. 76-260-X (Item No. 195; 1975-76) to allow for the reduction of square footage of the structure to house a tennis facility and/or racquetball facility.  
Acres: 4.053  
District: 1st

The items checked below are applicable:

- X A. Structure shall conform to Baltimore County Building Code (B.O.C.A.) 1979 Edition and the 1971 Supplement, State of Maryland Code for the Handicapped and aged and other applicable codes.
  - X B. A building permit shall be required before construction can begin.
  - X C. Additional miscellaneous permits shall be required.
  - D. Building shall be upgraded to new use - requires alteration permit.
  - E. Three sets of construction drawings will be required to file an application for a building permit.
  - X F. Three sets of construction drawings with a registered Maryland Architect or Engineer's original seal will be required to file an application for a building permit.
  - G. Wood frame walls are not permitted within 3'0" of a property line. Contact Building Department if distance is between 3'0" and 6'0" of property line.
  - H. Requested setback variance conflicts with the Baltimore County Building Code. See Section \_\_\_\_\_.
  - I. Comment. Insufficient data about structure to allow further comment. Handicapped parking can be located in other areas to better comply with the Code. See State Handicapped Code Section 316.4.
- NOTE: These comments reflect only on the information provided by the drawing submitted to the office of Planning and Zoning and are not to be construed as the full extent of any permit.

Very truly yours,  
*[Signature]*  
Charles E. Burnham, Chief  
Plans Review

CEB:rrj

## BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: October 31, 1979

Mr. S. Eric DiNenna  
Zoning Commissioner  
Baltimore County Office Building  
Towson, Maryland 21204

Z.A.C. Meeting of: November 6, 1979

RE: Item No: 85, 86, 87, 88, 89, 90  
Property Owner:  
Location:  
Present Zoning:  
Proposed Zoning:

District:  
No. Acres:

Dear Mr. DiNenna:

All of the above have no bearing on student population.

Very truly yours,

*[Signature]*  
W. Nick Petrovich,  
Field Representative

NNP/bp

JOSEPH N. MCGOWAN, PRESIDENT  
T. BAYARD WILLIAMS, JR., VICE-PRESIDENT  
MARCUS M. BOTHAIRIS

THOMAS M. BOYER  
MRS. LORRAINE F. LURICUS  
ROGER E. HAYDEN

ALVIN LORECK  
MRS. MILTON R. SMITH, JR.  
RICHARD W. TRACEY, D.V.M.

ROBERT V. DUBEL, SUPERINTENDENT



### SPELLMAN, LARSON & ASSOCIATES, INC.

SUITE 110 - JEFFERSON BUILDING  
105 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
823-3535

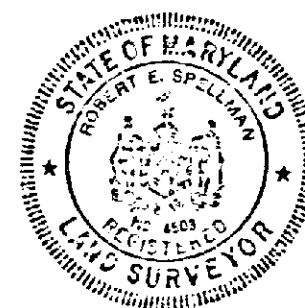
ROBERT E. SPELLMAN, P.L.S.  
JOSEPH L. LARSON  
LOUIS J. PIASECKI, P. E.  
JOHN M. GOSARADIS, P.L.S.

#### DESCRIPTION FOR SPECIAL HEARING, FREDERICK ROAD, BALTIMORE COUNTY, MARYLAND

Beginning for the same on the northwest side of Frederick Road at the distance of 149.15 feet measured southwesterly along the northwest side of Frederick Road from the centerline of Monmouth Road, 50 feet wide, running thence and binding on the north side of Frederick Road South 62 Degrees 06 Minutes 50 Seconds West 413.35 feet, thence leaving the north side of Frederick Road and running North 27 Degrees 53 Minutes 10 Seconds West 100.00 feet, and North 53 Degrees 14 Minutes 13 Seconds West 253.25 feet thence parallel to and at the distance of 175 feet southeasterly from Hillside Road North 22 Degrees 45 Minutes 30 Seconds East in all 333.63 feet, running thence South 62 Degrees 37 Minutes 50 Seconds East 192.53 feet South 62 Degrees 37 Minutes 50 Seconds East 104.94 feet, South 49 Degrees 39 Minutes 50 Seconds East 254.13 feet and South 27 Degrees 53 Minutes 10 Seconds East 60.00 Feet to the place of beginning.

Containing 4.053 acres of land more or less.

10/16/79



#### PETITION FOR SPECIAL HEARING

1st District

ZONING: Petition for Special Hearing  
LOCATION: Northwest side of Frederick Road, 149.15 feet Southwest of Monmouth Road  
DATE & TIME: Thursday, February 23, 1980 at 10:45 A.M.  
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the existing plan to allow the square footage of the structure to be reduced and to allow racquetball in lieu of tennis, to determine the validity of the Special Exception extension granted in Case No. 76-260-X, and an interpretation as to whether or not racquetball and tennis are synonymous

All that parcel of land in the First District of Baltimore County

Being the property of David L. Rouen, as shown on plat plan filed with the Zoning Department

Hearing Date: Thursday, February 28, 1980 at 10:45 A.M.  
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF  
WILLIAM E. HAMMOND  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3333

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

February 14, 1980

S. Eric DiNenna, Esquire  
Suite 205 - Alex Brown Building  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NW/8 Frederick Rd., 149.15' SW  
of Monmouth Road, David L. Rouen  
Case No. 80-167-SPH

Dear Sir:

This is to advise you that \$26.98 is due for advertising and posting of the above-property.

Please make check payable to Baltimore County, Maryland and remit to Sandra Jones, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,  
*[Signature]*  
WILLIAM E. HAMMOND  
Zoning Commissioner

WES:ej

S. Eric DiNenna, Esquire  
Suite 205 - Alex Brown Building  
Towson, Maryland 21204

#### NOTICE OF HEARING

RE: Petition for Special Hearing - NW/8 Frederick Rd., 149.15' SW of Monmouth Road - David L. Rouen - Case No. 80-167-SPH

TIME: 10:45 A.M.

DATE: Thursday, February 28, 1980

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

*[Signature]*  
ZONING COMMISSIONER OF  
BALTIMORE COUNTY



# PETITION FOR ZONING RECLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I, or we, RESCOM LAND LEASING, legal owner of the property situate in Baltimore County and which is described as follows: [Description of property] and plat attached hereto and made a part hereof, hereby petition the Zoning Commission of Baltimore County for a Special Exception to the Zoning Ordinance of Baltimore County, Maryland, to allow the use of the property for [Description of use].

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for [Description of use].

I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

By: [Signature] ZONING COMMISSIONER OF BALTIMORE COUNTY

By: [Signature] PROTESTANT'S ATTORNEY

ORDERED By The Zoning Commissioner of Baltimore County, this [Date] day of [Month], 1976, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commission of Baltimore County in Room 100, County Office Building in Towson, Baltimore County, on the [Date] day of [Month], 1976, at 10:30 o'clock.

By: [Signature] ZONING COMMISSIONER OF BALTIMORE COUNTY

## BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 6, 1976

COUNTY OFFICE BLDG.  
111 W. Cheltenham Ave.  
Towson, Maryland 21204

Franklin T. Hopkins, Jr.  
Chairman

MEMBERS  
BUREAU OF ENGINEERING  
DEPARTMENT OF  
TRAFFIC ENGINEERING  
STATE ROAD COMMISSION  
BUREAU OF FIRE PREVENTION  
HEALTH DEPARTMENT  
PROJECT PLANNING  
BUILDING DEPARTMENT  
BOARD OF EDUCATION  
ZONING ADMINISTRATION  
INDUSTRIAL DEVELOPMENT

Richard C. Whitford, Esq.  
305 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Special Exception Petition  
Item 195  
Rescom Land Leasing - Petitioners

Derek Mr. Whitford.

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commission with recommendations as to the appropriateness of the requested zoning.

The subject property is located on the north side of Frederick Road, 150 feet west of Monmouth Road, and is currently an unimproved property, 4.053 acres in area. The petitioner is requesting a Special Exception to permit a tennis club with indoor and outdoor tennis facilities.

Field inspection of the subject site revealed a stream running parallel to Frederick Road along and near the frontage of the property. This water course is not indicated on the plans and as per the comments of the State Highway Administration, this must be shown.

The Zoning Ordinance, as require that a rear yard setback in a Business Local zone indicates in the case of an abutting residential zone is 20 feet, and the setback of the all-weather courts area must be revised to reflect same.

Richard C. Whitford, Esq.  
Re: Item 195  
May 6, 1976  
Page 2

The petitioner indicates a proposed store in conjunction with the club building. Such retail area is apparently co-incident to the tennis facility, but in light of the commercial zoning of the property, some indication must be made as to the extent and purpose of the retail area, as well as provisions as required for off street parking area. The petitioner should note also the comments of the Bureau of Engineering, State Highway Administration, and the Project and Developer Planning section.

This petition is being withheld from a hearing date until such time as revised plans are received that reflect the comments in the foregoing, and any comments from other departments as requested.

Very truly yours,

Franklin T. Hopkins, Jr.  
Chairman, Zoning Plans  
Advisory Committee

PTB:JD

Enclosure

cc: Harlick Associates, Inc.  
40 Dutton Avenue  
Baltimore, Maryland 21228

Baltimore County  
Department of Public Works  
TOWSON, MARYLAND 21204

May 4, 1976

Mr. S. Eric DiBonna  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item 195 (1975-1976)  
Property Owner: Rescom Land Leasing Corp.  
150 W. Monmouth Rd.  
Existing Zoning: B1-CNB  
Proposed Zoning: Special Exception for community building, swimming pool, or other land use devoted to civic, social, recreational and educational activities (tennis lawn and outdoor courts).  
Acres: 4.053 District: 1st

Dear Mr. DiBonna:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

The submitted plan must be revised to indicate the present locations of the water courses traversing this site; the head and end of the 60-inch drain crossing Frederick Road, the metal (cast iron) pipe suspended above the roadway at the upstream end of this drain and the relation of Frederick Road paving and guard rails thereto; the locations of public water mains in Hollingsbrook Way and Frederick Road; and the portions of Lots 119 thru 123 of the recorded subdivision of Stowell Park (W.P.C. 7, Folio 18) which comprise the northwesterly part of this site and the ownership of adjacent properties are also to be indicated on the revised plan.

Highways:

Frederick Road (Md. 144) is a State Road; therefore, all improvements, intersections, entrances and drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration. Any utility construction within the State Road right-of-way will be subject to the standards, specifications and approval of the State in addition to those of Baltimore County.

Hollingsbrook Way is an existing improved residential county road; vehicular access is not to be provided this site therefrom. Highway improvements consisting of a standard road termination including any necessary highway right-of-way widening and reversible easements for slopes will be required in connection with any grading or building permit application. Further information may be obtained from the Baltimore County Bureau of Engineering. The submitted plan must be revised accordingly.

Item 195 (1975-1976)  
Property Owner: Rescom Land Leasing Corp.  
Page 3  
May 4, 1976

Highways: (Cont'd)

The entrance locations are subject to the approval of the Department of Traffic Engineering.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Drainage studies, sediment control drawings and storm water management drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

Storm Drainage:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

This site, or tributaries thereto, traverse this site.

In accordance with the drainage policy, the Petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

Open stream drainage requires a drainage reservation or easement of sufficient width to cover the flood plain of a 100-year design storm. However, a minimum width of 50 feet is required. The submitted plan should be revised to indicate the total tributary drainage area, in acres, and the limits of the 100-year flood plain.

Any grading, filling, stream relocation, etc. will also be subject to requirements and approval by the Maryland State Department of Natural Resources in event that the total tributary drainage area comprises 400 or more acres.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the petitioner.

Water:

There is an existing 8-inch public water main in Hollingsbrook Way (Drawing 855-1112, File 3). A public water main extension may be required along the Frederick Road frontage of this site from the 12-inch public water main in Frederick Road (Drawing 855-1113, File 3). Additional fire hydrant protection is required in the vicinity.

Item 195 (1975-1976)  
Property Owner: Rescom Land Leasing Corp.  
Page 3  
May 4, 1976

Sanitary Sewer:

There is an 8-inch public sanitary sewer along the Frederick Road frontage of this property (Drawing 855-1114, File 1). There is also public 12-inch sanitary sewerage traversing the site within a 10-foot utility easement (Drawing 852-088, File 1). The petitioner is advised that connection to either of these sanitary sewer lines is critical in regard to specific locations and invert elevations, due to stream inverts, concrete encasements, etc. The Petitioner will be responsible for a sanitary sewer study to determine the adequacy of the Frederick Road Sewage Pumping Station No. 2 and its force main relative to his proposed design sewage flows (both average and peak flows) in gallons per day.

Generally, encroachment by construction of any structure, including footings, is not permitted within County utility easements and rights-of-way. The Petitioner is responsible for a recorded agreement between the Petitioner, its heirs, successors and assigns and Baltimore County, setting forth the Petitioner's responsibilities and saving Baltimore County harmless from any/all damages or claims in connection with the construction, maintenance and use of the tennis courts over the public utility easement and sanitary sewer.

It must be noted that existing sanitary sewer manhole covers are not to be covered by any material. The Petitioner would be entirely responsible for the costs of any sanitary sewer relocation. This property is tributary to the Patapsco Sewage System, subject to State Health Department imposed restrictions.

Very truly yours,

Franklin T. Hopkins, Jr.  
Chairman, Zoning Plans  
Advisory Committee

cc: EAM:FWB:SS

cc: A. Belletti  
J. Loe  
J. Winkley  
D. Grise  
W. Munchel

12 SW 28 & 29 Nos. Sheets  
SW 3 Q & N Topo  
100 Tax Map

Baltimore County  
Department of Public Works  
TOWSON, MARYLAND 21204  
(301) 225-7210

Paul H. Reincke  
Chief

Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Attention: Mr. Jack Dillon, Chairman  
Zoning Advisory Committee

Re: Property Owner: Rescom Land Leasing Corp.

Location: 150 W. Monmouth Rd.

Item No. 195

Zoning Agency April 6, 1976

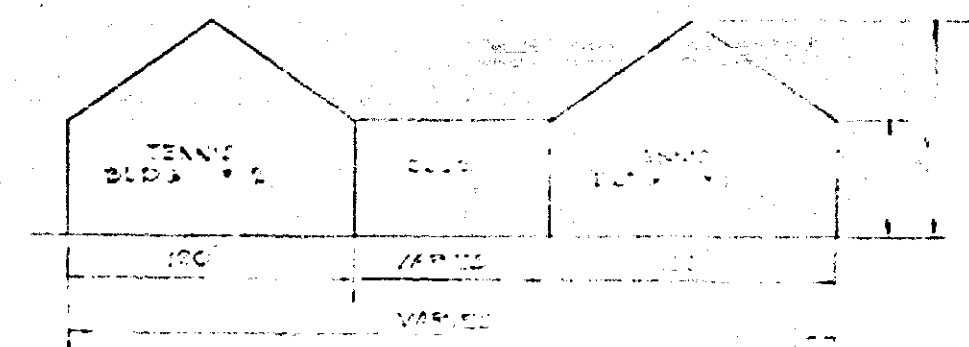
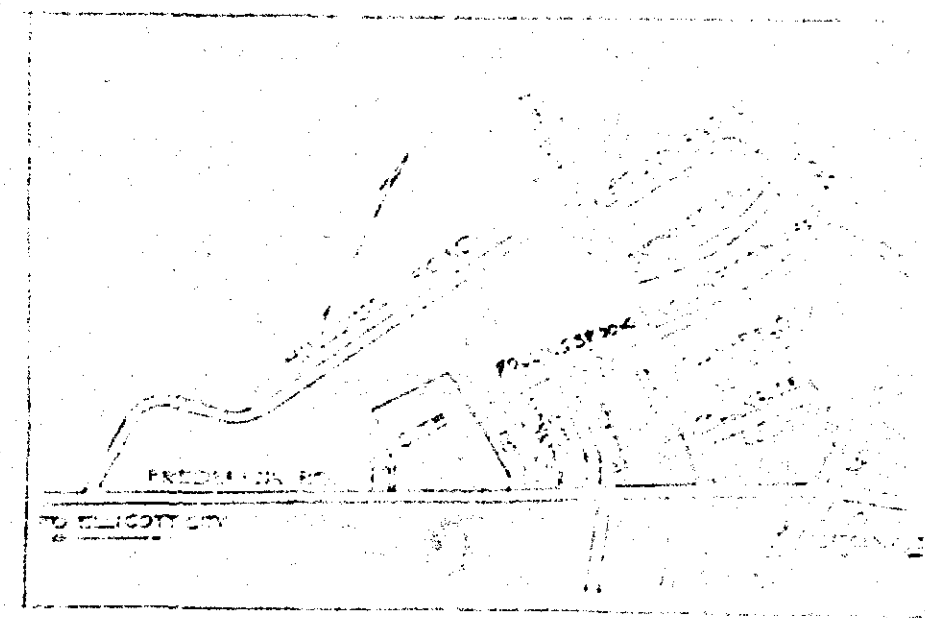
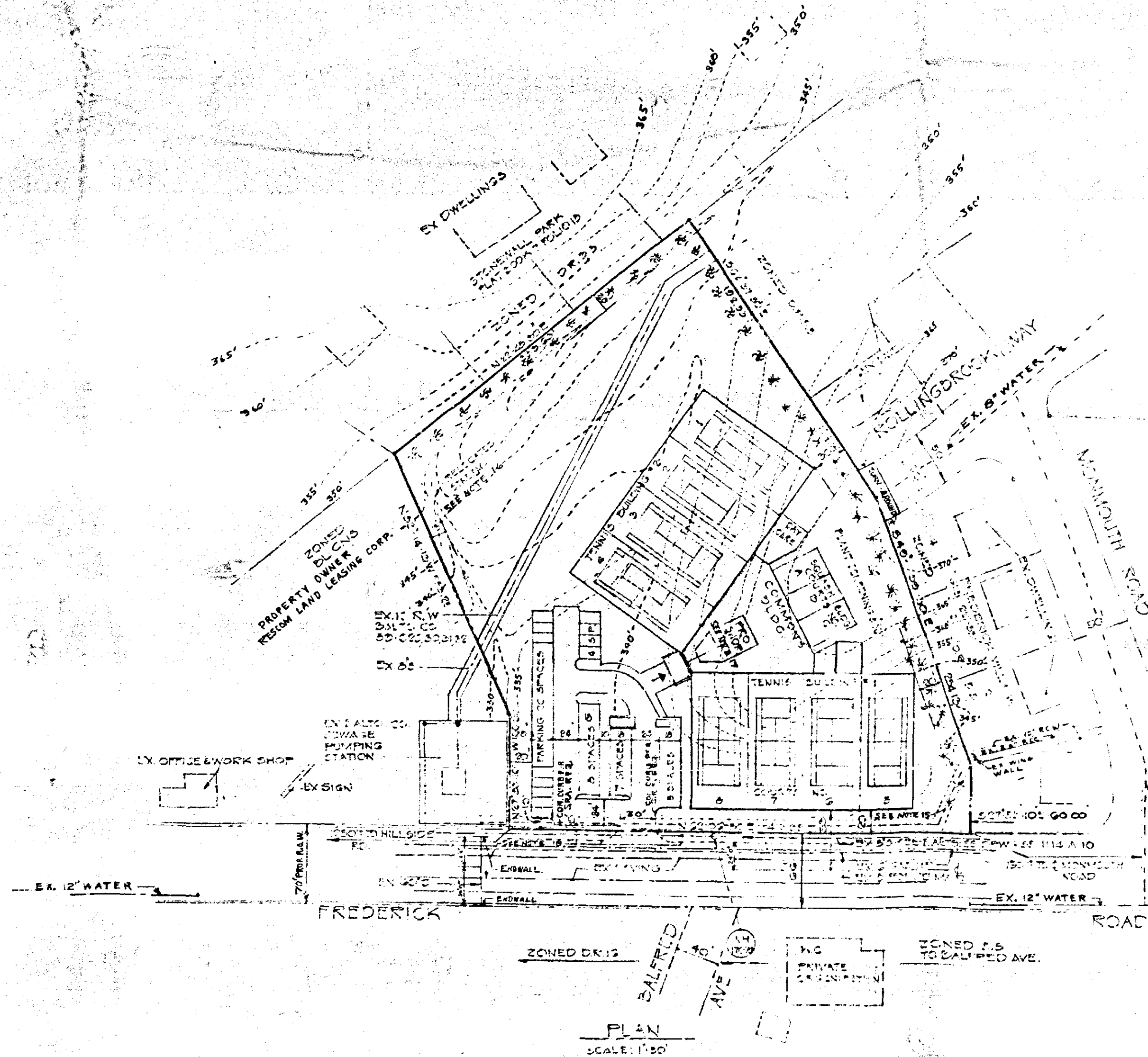
Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at intervals of [ ] feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
2. A second means of vehicle access is required for the site.
3. The vehicle dead-end condition shown at [ ] exceeds the maximum allowed by the Fire Department.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1970 Edition prior to occupancy.
6. Site plans are approved as drawn.
7. The Fire Prevention Bureau has no comments, at this time.

Reviewed: [Signature] Noted and  
Approved: [Signature] Acting Deputy Chief  
Planning Group Fire Prevention Bureau  
Special Inspection Division





FRONT ELEVATION  
TENNIS BUILDING

BOARD OF APPEALS  
PETITIONER'S  
EXHIBIT ①

- GENERAL NOTES:
1. OWNER: 4000 AC.
  2. LOCAL RESIDENTS: 100' WIDE STRIP OF LAND.
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*Handwritten signature and date: March 1970*

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80-37  
JBC

S. Eric DiNenna  
Attorney at Law  
Suite 203 Alex. Brown Building  
102 W. Pennsylvania Avenue  
Towson, Maryland 21204  
301 - 625-1630

January 4, 1980

The Honorable William E. Hammond,  
Zoning Commissioner for Baltimore County  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: N/S of Frederick Road, 1250' East  
of Hillside Road  
First Election District  
Petitioner, David L. Rouen  
My File No. 79-29

Dear Commissioner Hammond:

Enclosed herewith please find the Petition for Special Hearing, in triplicate, for the property as above captioned. This matter was initially filed on October 22, 1979 and it is my understanding that it has been processed through the Zoning Advisory Committee.

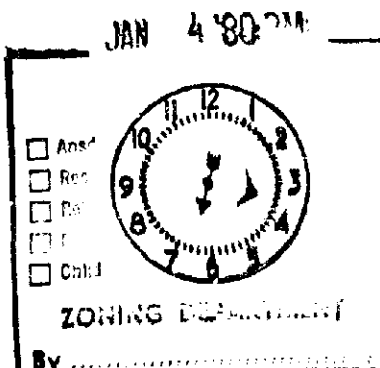
Accordingly, I respectfully request that it be set in for a hearing as soon as possible.

Thank you in advance for your kind consideration and attention.

Very truly yours,  
S. ERIC DINENNA

SED:cm  
Enclosures  
HAND-DELIVERED 1/4/80

cc: Mr. Joseph L. Larson,  
Vice President  
Spellman, Larson & Associates, Inc.  
cc: Dr. David L. Rouen



# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond  
Zoning Commissioner  
John D. Seyffert, Director  
Office of Planning and Zoning  
Petition No. 80-167-SPH

Date: February 12, 1980

Petition for Special Hearing  
Northwest side of Frederick Road, 149.15 feet Southwest of Monmouth Road  
Petitioner - David L. Rouen

FIRST DISTRICT

HEARING: Thursday, February 28, 1980 (10:45 A.M.)

If granted, it is requested that a detailed landscaping plan be required for approval by the Division of Current Planning and Development.

John D. Seyffert, Director  
Office of Planning and Zoning

JDS:JGH:ab



BALTIMORE COUNTY  
OFFICE OF PLANNING & ZONING  
TOWSON, MARYLAND 21204  
494-3353

WILLIAM E. HAMMOND  
ZONING COMMISSIONER

May 27, 1981

S. Eric DiNenna, Esquire  
Suite 205  
Alex Brown Building  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NW/S of Frederick Rd., 149.15' SW of  
Monmouth Rd. - 1st Election District  
David L. Rouen - Petitioner  
NO. 80-167-SPH (Item No. 86)

Dear Mr. DiNenna:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

Jean M. H. Jung  
JEAN M. H. JUNG  
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: Mr. Eugene Shaver  
116 South Hilltop Road  
Catonsville, Maryland 21228

Ms. JoAnn Hahr  
6 Monmouth Road  
Catonsville, Maryland 21228

John W. Hessian, III, Esquire  
People's Counsel

P. T. LEMMON

VIA REGISTERED U. S. MAIL  
RETURN RECEIPT REQUESTED

23 January 1978

MR. S. ERIC DINENNA  
Zoning Commissioner of Baltimore County  
Baltimore County Office Building  
Towson, Maryland 21204

RE: Case No. 76-260-X

Dear Mr. DiNenna:

You are respectfully requested to grant me a formal extension for the maximum allowable period of time - five years, we believe, until November 23, 1981 - of the Order issued on the 23rd day of November 1976, by the County Board of Appeals for Baltimore County, in the subject case for a structure devoted to recreational activities, i. e., indoor tennis lawn or lawn.

You issued an affirmative Order, dated August 4, 1976, in this case. The sole agent was taken by the People's Counsel for Baltimore County, no individual protestors appearing at the hearing before the Board of Appeals.

You are informed that the purchase contract existing at the time of the Board's Order was abandoned by the prospective buyers, for the reason of inability to obtain a sewer permit or satisfactory test boring in this regard. The same condition still exists until the completion of the sewage treatment plant. Accordingly, we submit this request for an extension.

You will, we trust, immediately grant this extension so that our broker may proceed with negotiations with interested parties without an approaching termination date not attuned to the unknown date when a sewer permit is certain.

Respectfully yours,

PERSON LAND LEASING CORPORATION

By: P. T. Lemmon  
P. T. LEMMON - PRESIDENT

778 188 NEW YORK SUPPLEMENT, 24 SERIES

employment environment. Although not directly in point, some collateral light is cast on this problem by decisions such as *Verschleiser v. Joseph Stern & Son*, 229 N.Y. 192, 128 N.E. 126 and *Vesper v. Colonial Radio Corp.*, 274 App.Div. 859, 81 N.Y.S.2d 794.

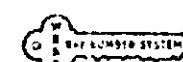
Claimant's provocative conduct was not due to "wilful intention" in the sense that term is used in the statute (Commissioner of Taxation and Finance v. Bronx Hospital, 276 App.Div. 708, 711, 97 N.Y.S.2d 120, 122; leave to appeal denied 277 App.Div. 911, 98 N.Y.S.2d 591; 301 N.Y. 813, 95 N.E.2d 57), but was due to mental disease.

In this respect the problem is somewhat similar in underlying principle to the case where physical weakness or illness of an employee is a direct cause of industrial casualty. We do not need to go further here than to say that in the view we take of this record the accident arose both out of and in the course of employment.

The award should be affirmed with costs to the Workmen's Compensation Board.

Award affirmed with costs to the Workmen's Compensation Board.

FOSTER, P. J., and COON, HERLIHY and REYNOLDS, JJ., concur.



8 A.D.2d 101

Application of NEW YORK LIFE INSURANCE COMPANY and Manhattan Eye, Ear and Throat Hospital, Petitioners-Appellants-Respondents, v. HARRIS H. MURDOCK, Petitioner-Respondent, and P. J. COON, Petitioner-Respondent, constituting the Board of Standards and Appeals of the City of New York, Respondents-Appellants, and E. J. DENBAR, Inc., Deborah E. Darnett and Shamrock Closers, Inc., Intervenor-Respondents-Appellants.

Supreme Court, Appellate Division, First Department,  
June 11, 1959.

Proceedings on petition for review of the decision of the Board of Standards and Appeals of the City of New York granting an extension of variance. The Supreme Court, Special Term, New York County, Arthur G. Klein, J., 15 Misc.2d 532, 182 N.Y.S.2d 397, annulled and set aside the determination and remanded the matter to Board with directions, and all parties appealed pursuant to leave granted. The Appellate Division, McNally, J., held that notice to objectors would have been eminently desirable in circumstances of case, but that absence of particular notice of hearing as to extension of use variance was not a jurisdictional defect.

Affirmed.

NEW YORK LIFE INSURANCE COMPANY v. MURDOCK 779

1. Municipal Corporations C-62161

Notice to objectors would have been eminently desirable in circumstances of case, but absence of particular notice of hearing as to extension of use variance was not a jurisdictional defect.

2. Municipal Corporations C-62161

Special Term properly remanded proceeding so that Board could supply its grounds for granting extension of use variance.

Milton Mollen, Brooklyn, of counsel (James J. Hurley, New York City, on the brief; Charles H. Tenney, New York City, attorney), for respondents-appellants.

Samuel I. Rosenman, New York City, of counsel (Mendes Hershman, Max Freund, Milton Adler and Harry A. Leigh, New York City, on the brief; Rosenman, Goldmark, Colin & Kaye, New York City, attorneys; Angelo, Cooney, Marsh & Ouchterlony, New York City, attorneys), for appellants-respondents.

W. Bernard Richmond, New York City, of counsel (Baer, Marks, Friedman, Berliner & Klein, New York City, attorneys), for intervenor-appellants-respondents.

Before BREITEL, J. P., and RABIN, M. M. FRANK, McNALLY and STEVENS, JJ.

McNALLY, Justice.

All parties have appealed from the order of Special Term entered January 5, 1959 pursuant to leave granted under section 1304 of the Civil Practice Act. The order denied the motion of the Board of Standards and Appeals and the intervenors for an order vacating the order of certiorari, dismissing the petition and sustaining the determination of the Board. The Board's determination permitted the intervenors to continue the operation of an enlarged dry cleaning business which intervenor had previously been granted a zoning use variance. The order further reversed, annulled and set aside the determination, remanded the matter to the Board for decision on the application for the continuance of the enlarged dry cleaning business and to supply the grounds for its determination. It further directed that public notice of the hearing be given and all interested parties be permitted to introduce proof in support of or in opposition to said application.

On March 6, 1956 the Board granted a variance in the application to the premises here involved of the use district regulations under subdivision (c) of section 7 of the Zoning Resolution of the City of New York for a term of two years. On October 23, 1957 the intervenors requested an extension of the term of the variance for the period of two years from March 6, 1958 to March 6, 1960. Thereupon, the Board,

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without public notice, extended the term of the variance for five years from November 23, 1957.

[1] We hold the absence of particular notice of hearing as to the extension of the use variance was not a jurisdictional defect. See *Ottling v. Arenal Realty Co.*, 257 N.Y. 371, 178 N.E. 645. However, notice to the petitioners would have been eminently desirable in the circumstances of this case.

Since the remand to the Board is required in any event, we do not disturb the order insofar as it directed the giving of notice for any further hearing. As a practical matter the giving of such notice is now all but moot.

Section 7 of the Zoning Resolution of the City of New York provides:

7. Use District Exceptions. The Board of Standards and Appeals may, in appropriate cases, after public notice and hearing, and subject to appropriate conditions and safeguards, determine and vary the application of the use district regulations herein established in harmony with their general purpose and intent as follows:

"(c) Permit the extension of an existing or proposed building into a more restricted district under such conditions as will safeguard the character of the more restricted district; permit, where premises are devoted to a non-conforming use, a new building or structure or the extension of an existing building or use into a more restricted district or into a district restricted against the proposed use under such conditions as will safeguard the character of the district."

Some of us believe that the Board had no power to grant the extension under subdivision (c). Those of us who so believe agree with the interpretation placed upon the section by the petitioners that subdivision (c) authorizes the Board to permit the extension of lawful existing non-conforming uses "into" more restricted districts with due regard to the general purpose of the Zoning Resolution, and does not empower the Board under subdivision (c) to authorize changes in the use of buildings from one nonconforming use to another within the same district which is the relief sought in the instant application. See *Reed v. Board of Standards and Appeals*, 255 N.Y. 126, 174 N.E. 301. In that case the application was made under subdivision (c) to permit a part of a proposed theatre to be built in a residence district. The greater part of the lot on which the theatre was to be erected was in a business district and the variance sought was one to permit a small portion of the theatre to enter 1 into the residence district, to wit, 25 feet on 72nd Street and 15 feet, 8 inches on 71st Street.

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We do not, however, at this time disturb the action of the Board on this ground in view of its apparently broad powers under subdivision (c) of section 7 which provides:

"(c) Permit, for a stated term of years, buildings and uses not in conformity with the requirements of this article and not otherwise specifically provided for in this section."

*Cl. Thomas v. Board of Standards and Appeals*, 290 N.Y. 109, 48 N.E. 2d 24; *People ex rel. Smith v. Walsh*, 240 N.Y. 606, 148 N.E. 724.

[2] The direction of Special Term remanding the proceeding, however, so that the Board supply its grounds for granting an extension, particularly one of five years' duration, is correct. Thus, whatever action the Board may take, its determination will be more readily reviewed with reference to arbitrariness or reasonableness. In so directing the Board, the Board is free to consider the matter de novo without limitation by reason of its prior determination.

The final order should be affirmed, without costs.

All concur.

Final order so appealed from, in all things, unanimously affirmed, without costs.

Order filed.



8 A.D.2d 673

Case of WILLIAM E. DONSTEELE, Respondent, v. SKYLINE PRODUCTS, INC. and Gloria Falls Industry Company, Appellants, Dominick J. DeRosa and Great American Indemnity Co., Respondents. Workmen's Compensation Board, Respondent.

Supreme Court, Appellate Division, Third Department,  
June 9, 1959.

Workmen's compensation proceeding. From a decision of the Workmen's Compensation Board, the employer and insurance carrier appealed. The Supreme Court, Appellate Division, held that substantial evidence supported finding that disability of employee was attributable to one accident and to sustain the finding of disability from the date of that period.

Award affirmed.

Workmen's Compensation C-1674

Sustained the evidence supported finding that disability of employee was attributable to one accident and to sustain the finding of disability

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It is to be noted that PERB has held only that determination of class size is not negotiable. It has not been held that the impact of class size on the teachers is not negotiable. As stated in PERB's majority opinion: "Nevertheless, impact is a matter for negotiations. Thus, it is not the thrust of this decision that an employer is not required to negotiate on subjects which affect the allocation of resources because salaries clearly have such an effect; rather, the thrust of this decision is that the basic policy decisions as to the implementation of a union of an agency of government are not mandatory subjects of negotiations." PERB's rationale could, we believe, be crystallized with this example: The decision whether, say, sections of the fourth grade should contain 25, 28 or 32 pupils is a policy decision and not negotiable; whereas whether the teachers responsible for the sections are to receive varying consideration and benefits depending on the ultimate size of each section as so determined is mandatorily negotiable as a condition of the employment.

The association's strong reliance on Board of Educ. v. Associated Teachers of Huntington (39 N.Y.2d 122, 321 N.Y.S.2d 17, 282 N.E.2d 10, supra) is misplaced. There, unlike the present case, the problem areas clearly involved terms and conditions of employment. The dispute centered about whether the employer was limited under the Education Law as to the terms and conditions of employment it could negotiate, or whether the Taylor Law made the employer's power unqualified so that it could freely negotiate such terms and conditions without regard to express authority under the Education Law. The question in the instant case is less complex, being whether in the first instance, the problem area involves a term or condition of employment at all. We agree that PERB articulated a rational basis for its determination as to the employer's favor and that it has the power to make this determination.

The judgment appealed from is affirmed.

Modified and affirmed.  
Stevens, J., took no part.

BREITEL, C. J., and JASEN, JONES, WACHTLER and SAMUEL RABIN, JJ., concur.

STEVENS, J., taking no part.

Judgment affirmed, with costs.

33 N.Y.2d 52  
In the Matter of NEW YORK LIFE INSURANCE COMPANY, Respondent-Appellant,

vs.  
Thomas F. GALVIN et al., Constituting the Board of Standards and Appeals of the City of New York, Appellants-Respondents,

and  
Sheldon H. SOLOW, doing business as Solov Realty Company, Intervenor-Respondent-Appellant.

Court of Appeals of New York,  
July 11, 1978.

Article 78 proceeding to annul grant of special permit by zoning body and an extension of time to complete construction. The Supreme Court, Trial Term, New York County, Harry B. Frank, J., confirmed the determinations and denied the petitions, and petitioner appealed from judgment and from an intermediate order. The Supreme Court, Appellate Division, inter alia, reversed and vacated, 41 A.D.2d 83, 349 N.Y.S.2d 822, and cross appeals were taken. The Court of Appeals, Gabrieli, J., held that grant of special permit for a second theatre in C1 district, after first theatre had been approved, did not violate, either in spirit or in letter, the provisions of the Zoning Resolution, and that extending time to complete construction did not constitute an abuse of discretion.

The judgment appealed from is affirmed.

Modified and affirmed.  
Stevens, J., took no part.

NE

1. Zoning C-387

Grant of special permit for 500-seat theatre in C1 district, after first theatre had been approved, did not constitute an abuse of discretion.

2. Zoning C-645

Sufficient evidence that community was construction of C1 district, after first theatre had been approved, did not constitute an abuse of discretion.

3. Zoning C-434, 43

There is no reason to extend time to complete construction of C1 district, after first theatre had been approved, did not constitute an abuse of discretion.

4. Zoning C-338

Action of Board of Standards and Appeals of City of New York to extend time to complete construction of C1 district, after first theatre had been approved, did not constitute an abuse of discretion.

Robert A. Kirtz  
Arthur Kramer  
New York City,  
Adrian P. Bur  
New York City (Man  
Buchanan, New  
for Board of Stan  
City of New York

David W. Pe  
Thomas A. Grant,  
Intervenor-Respondent

GABRIELI, J.

These are cases of the Appellate Division of the Court of Appeals of the State of New York, which (1) grant







1. Zoning C-387

Grant of special permit for second 500-seat theatre in C1 zone, after first theatre had been approved, did not violate letter or spirit of zoning resolution and did not constitute an abuse of discretion.

2. Zoning C-645

Sufficient evidence existed to show that community would derive value from construction of second 500-seat theatre in C1 district, after construction of first 500-seat theatre had been approved.

3. Zoning C-434, 436

There is no requirement that an application to extend time to complete construction be treated as a new application for which public notice and a hearing are mandatory.

4. Zoning C-358

Action of Board of Standards and Appeals of City of New York, in extending time to complete construction of theatre, did not constitute an abuse of discretion.

Robert A. Kirtland, Mendes Herberman, Arthur Kramer and Ruth Schoonmaker, New York City, for respondent-appellant.

Adrian P. Burke, Corp. Counsel, New York City (Morris Einhorn and Stanley Roschbaum, New York City, of counsel), for Board of Standards and Appeals of the City of New York, appellant-respondent.

David W. Peck, Irvine D. Finn and Thomas A. Grant, New York City, for intervenor-respondent-appellant.

GABRIELLI, Judge.

These are cross appeals from an order of the Appellate Division, 41 A.D.2d 83, 39 N.Y.S.2d 822, which modified a Special Term judgment confirming a determination of the Board of Standards and Appeals of the City of New York (Board) which (1) granted the intervenor-respondent (Solow) an extension of time within which to substantially complete the construction of a 500-seat theatre and (2) also granted a special use permit for the construction of a second 500-seat theatre. The Appellate Division modification consisted of annulling the determination which authorized the construction of the second theatre. The extension of time granted to Solow related to the construction of a 45-story apartment building, to contain residential quarters and business establishments, including a 500-seat theatre in the basement of the building. Furthermore, the owner of substantial parcels in the immediate vicinity of the subject property, resists the grant of permission to construct any theatre.

The plot under review is situated on the west side of Second Avenue between East 66th and East 67th Streets in New York City with a frontage of 100 feet on the north side of East 66th Street and 300 feet on the south side of East 67th Street; and the portion fronting Second Avenue is located within a C1-9 Zoning District in which movie theatres are not permitted except where a special permit is granted by the Board pursuant to the provisions of section 73-20 of the Zoning Resolution. This section provides that: "In C1 Districts, the Board may permit theaters with a capacity of not more than 500 persons, and may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of nearby residential areas." Section 73-11 of the Zoning Resolution provides that such special permits may be granted by the Board where the Board shall find that under the conditions and safeguards imposed, the benefits or disadvantages to the community at large through the location of such use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit use.

On April 23, 1956, Solow applied to the Board for a special permit to install "main theatres" each with a capacity of 500 seats. At this time the plans provided for a main

ing area within the building of approximately 2,500 square feet. In the fall of 1959, Solow revised his request to encompass one 500-seat theatre, and on December 15, 1959, the Board granted a special permit on the condition that there be no waiting lines on sidewalks and on the further condition that substantial construction be completed within one year. Because of delays caused by difficulty in arranging satisfactory removal efforts regarding tenants in the existing building, the Board granted Solow until December 16, 1971 to complete construction.

On January 26, 1971, Solow applied to the Board for a second 500-seat theatre on his property. The architectural plans were revised from the original 1959 application to now provide for a depressed plaza waiting area of approximately 3,200 square feet. Following hearings commencing in March 1971, and after inspecting the property, the Board, by resolution dated May 4, 1971, granted him a special permit for the additional theatre. On December 7, 1971, for proper reasons Solow requested a further one-year extension to complete substantial construction, which was subsequently granted.

At the crux of this appeal is the exact nature of the physical structure to be erected. The majority at the Appellate Division described it as a "single room served by two adjoining entrances and divided down its approximate center by a partition." Our examination of the record does not support this view. Solow sought to erect a 45-story commercial and residential building, the entire width of Second Avenue from East 66th Street and East 67th Street which was designed to contain two separate 500-seat movie theatres in the second cellar of the building. The proposed seating areas of the theatres were to be located at opposite ends of the block

1. Apparently this would be the first theatre in New York City with a completely subterranean waiting area.

2. In fact the Board resolution granting the special permit stipulated that there be no waiting lines on the sidewalks fronting the premises.

with their inner walls being 98 feet apart. Access to the theatres was by an entrance at street level, which opened to a depressed plaza (3,213 square feet in area and 5 feet below ground level), and which contained separate entrances of ingress and egress via a stairway and escalator to the individual theatres. A single ticket booth situated in the plaza was designed to serve both theatres. Each theatre had its own restrooms and smaller lobbies at the foot of the stairs leading to the seating areas.

In resolving these issues we are required to construe the resolutions without giving the words a strained meaning, "so as to effectuate the purposes sought to be accomplished by the enactments (see Matter of Westchester County S. P. C. A. v. Menzel, 292 N.Y. 121, 126, 54 N.E.2d 329, 330). The statutorily stated intent inherent in the establishment of C1 districts is to maintain local retail shops catering to the day-to-day needs of nearby residents. Additionally, the obvious intent of section 73-20 of the Zoning Resolution, permitting movie theatres on certain conditions, was to limit the inconvenience and obstruction to adjoining property owners and their invites. In approving the grant of the special permit, the Board required that the scheduling of performances in the theatres be staggered; and it was further stipulated that there would be at least a 30-minute differential between showtimes in the respective theatres with different movies being shown at each theatre. Consequently, it seems highly unlikely that there ever would be 1,000 persons waiting at a single time. Moreover, the proof showed that the outdoor depressed area would accommodate as many as 1,000 waiting patrons. The depressed plaza would be shielded from the street and neighboring properties by trees and shrubs and was to be covered by an overhead canopy? In addition to this off-street entry arrangement there would also

a separate exits from each of the theatres onto the side streets.

[1] Our resolution of this case is aided by a comparison with a comparable situation where the theatres might be erected by separate individuals on contiguous lots, even with a single ticket booth. In fact, we find the situation under review preferable and more consonant with the purposes sought to be accomplished by the zoning enactments. The staggering of showtimes and the separate exits onto parallel streets are features not normally available to residents living in a neighborhood where there are two closely separated but contiguous theatres. We also take note of the persuasive argument advanced by the Board that the Zoning Resolution (§ 73-20) "does not prohibit granting a special permit for more than one 500-seat theater on single zoning lots. There is no reason to distinguish two theaters on a large single zoning lot from two theaters on separate, adjoining lots." Furthermore, "the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld (Matter of Howard v. Wyman, 30 N.Y.2d 434, 438, 322 N.Y.S.2d 633, 635, 21 N.E.2d 528, 529; see also, National Labor Relations Board v. Hearst Publications, 32 U.S. 111, 131, 64 S.Ct. 851, 85 L.Ed. 1170; Rochester Tel. Corp. v. United States, 32 U.S. 123, 146, 57 S.Ct. 754, 63 L.Ed. 1147). Accordingly, we hold that the grant of a special permit for an additional theatre did not violate the letter or spirit of the Zoning Resolution and did not constitute an abuse of discretion.

[2] We find no merit to petitioner's reliance on the arguments that (1) there was no substantial evidence to show that the community would derive advantages from the second theatre and (2) that the extension of the special permit for an additional theatre was not only a determination without substantial evidence in support of the Board's determination. In doing so, of course, we may not substitute

our judgment for that of the Board and we are required only to determine whether there has been illegality, arbitrariness, or an abuse of discretion (Matter of Lantz Realty Corp. v. Larkin, 11 N.Y.2d 23, 24, 226 N.Y.S.2d 374, 376, 181 N.E.2d 407, 408; People ex rel. Forthman Moore, 407 Church v. Walsh, 24 N.Y.2d 289, 155 N.E.2d 573; Matter of Reed v. Board of Sids & Appeals, 25 N.Y. 123, 174 N.E.2d 301). Finding that the advantages to the community would offset any possible inconvenience to the neighborhood, the Board, after viewing the premises and surrounding area, and after numerous hearings over nearly three years, expressly concluded that there was a need to be fulfilled by the theatres, that the theatres would enhance property values in the area, and that they will benefit the commercial uses along Second Avenue and the economy of the city as a whole. In light of these express findings amply supported by the record, we find no arbitrariness in the Board's determination of advantage, and likewise no illegality in its decision.

[3,4] Lastly we find no abuse of discretion or illegality in the Board's action in extending respondent's time to complete construction, in fact, in granting an application for an extension. It is not required that such an application be treated as a new application for which public notice and a hearing are mandatory. Although we hold that on such an application, the proceeding need not be treated *de novo* (cf. *Ontario v. Arden Realty Co.*, 237 N.Y. 371, 128 N.E. 643; *Matter of New York Life Ins. Co. v. Murdock S.A.*, 103 N.Y. 186, N.Y.S.2d 775), we note that petitioner was afforded an opportunity to appear and present his case to the Board. Section 73-20 of the Zoning Resolution provides that a special permit is ordinarily lapse upon the expiration of the year but there is otherwise no impediment to the grant of extensions prior to the expiration of one year. The record fully supports the Board's exercise of discretion in this regard and in fact at least one of the hearings petitioner's counsel conceded that

the delay in construction was not in any way the result of respondent's ineptness, but was caused by the inevitable delays in carrying out former tenants.

Accordingly, the order of the Appellate Division should be modified by reversing so much of the order of the Appellate Division which annulled the Board's determination permitting a second 500-seat theatre, and, as so modified, it should be affirmed.

BRETEL, C. J., and JAMES JONES, WACHTLER and SAMUEL PAPIN, JJ., concur.

STEVENS, J., taking no part.

Order modified, without costs, in accordance with the opinion herein, and, as so modified, affirmed.

35 N.Y.2d 61  
Carmine CELESTE, Plaintiff,  
v.  
PRUDENTIAL-GRACE LINES, INC., Defendant and Third-Party Plaintiff-Appellant,  
AMERICAN STEVEDORES, INC., Third-Party Defendant-Respondent.  
Court of Appeals of New York,  
July 11, 1974.

Inter alia, a third-party action against stevedores. The shipowner in turn commenced a third-party action against independent stevedores. The Supreme Court, Special Term, New York County, Harry R. Frank, J., granted motion by stevedores to dismiss the third-party complaint, and the Supreme Court, Appellate Division, 32 A.D.2d 692, 345 N.Y.S.2d 925, and appeal was taken by

permission. The Court of Appeals, Garbrieli, J., held that action by shipowner against stevedores was one for indemnity in which liability did not fasten until judgment in main action was entered and paid; and that under the circumstances, when liability in main action brought by injured longshoreman against shipowner had not yet been fixed, third-party action by shipowner against stevedores was not barred by New York statute of limitations relating to contracts, and that once judgment had been entered and paid in main action, the continued viability of the cause of action for indemnity would not be conclusively governed by the New York six-year statute of limitations, but rather by Federal law.

Order reversed, third-party complaint reinstated.

1. Admiralty C-126(1)  
A maritime action instituted in state court is governed by federal maritime principles.  
2. Admiralty C-120(1)  
Despite the grant of concurrent jurisdiction in federal and state courts over maritime action, state courts are bound to apply federal law in resolution of such disputes. 28 U.S.C. § 1333.  
3. Indemnity C-11, 135  
A maritime cause of action for indemnity does not accrue until a judgment has been entered and paid.  
4. Shipping C-284(4)

Where shipowner was sued by injured longshoreman, third-party action by shipowner against stevedores was one for indemnity in which liability did not fasten until judgment against shipowner was entered and paid, and under these circumstances, where liability in the principal action brought by injured longshoreman had not yet been fixed, third-party action by shipowner against stevedores was not

The mutual mistake or fraud alleged in this action as the basis for reformation of the lease and urged as a ground for the temporary injunction. The very question now before the court has thus been presented to the Municipal Court for determination. The Municipal Court has jurisdiction in the summary proceedings to entertain on the merits and to pass upon an equitable defense, see *Dibert Bros. v. Forreman*, Sup. Ct. 91 N.Y.S.2d 633; *DeVita v. Plonowski*, 127 Misc. 611, 271 N.Y.S.2d 438; *Wells, Inc. v. William Shapiro, Inc.*, Sup. App. T., 18 N.Y.S.2d 363, and if the plaintiff is able to establish mutual mistake or fraud, it is unnecessary to invoke the jurisdiction of this court. I have, heretofore, had occasion to say that "it may safely be stated that it is the general rule that the supreme court should not restrain a pending summary proceeding except in a case where the circumstances indicate that the respondent (tenant) has clear, equitable grounds entitling him to retain possession and that summary may not be effectively interposed as a defense in the local court." *Newman v. Manrosa Realty Corp.*, Sup. Ct. 119 N.Y.S.2d 833, 833. I adhere to this rule, so therefore, the motion is denied. The stay contained in the order to show cause is vacated.

Submit order on notice.

A. William BARCOCK, Karl Hines and Anita F. White, Plaintiffs, v. PORT WASHINGTON LITTLE LEAGUE, Inc. and Metropolitan Land & Gravel Corporation, Defendants.  
Supreme Court, Special Term, Nassau County, Part I,  
July 7, 1965.

Action was brought to enjoin defendants from using certain premises as a Little League baseball field in a manner which did not comply with certain conditions and regulations laid down by Board of Zoning and Appeals of town, and they moved for an injunction pendente lite restraining violation of the conditions. The Special Term, Harry R. Frank, J., held that where Board granted a permit for use of real property in a residential C1 district for a baseball field subject to certain conditions and regulations, and the Little League found conditions imposed unsatisfactory, an attempted modification of the conditions was required to conform to the provisions of the Town Law requiring that rehearing be held, and executive modification order of the Board, on recommendation of one of its members, who had conferred with a representative of the Little League, and considered the matter ex parte, and had made the revisions, was valid. Judgment in accordance with opinion.

1. Municipal Corporations C-592(1)

Provision in town zoning ordinance requiring that when a conditional use of realty is sought, owners and occupants of lands within a 200-foot radius must be notified of application by registered mail, could not abridge, modify, or limit requirements of public notice contained in the Town Law. Town Law, § 267, subd. 5.

2. Injunction C-114(2)

Provision of town zoning ordinance requiring that when a conditional use of realty is sought, owners and occupants of lands within a 200-foot radius must be notified of the application by registered mail, did not prevent owners of realty located more than 200 feet from premises used as a Little League baseball field from maintaining action to enjoin the use of the baseball field in a manner contrary to conditions and regulations laid down by Board of Zoning and Appeals of town. Town Law, § 267, subd. 5, 268, subd. 2.

3. Municipal Corporations C-621.63

Where Board of Zoning and Appeals of town granted a permit for use of realty in a "residence C" district for a Little League baseball field subject to certain conditions and regulations, and the Little League found conditions unsatisfactory, any attempted modification of conditions was required to follow provisions of the Town Law requiring that rehearing be held, and therefore modification order of the Board, or recommendation of one of its members, who had conferred with a representative of the Little League, had considered matter ex parte, and had made revisions, was ineffective and void. Town Law, § 267, subd. 6.

Leonard Weintraub, Port Washington, for plaintiffs.

Horowitz, Parker & Horowitz, Port Washington, for defendants.  
Henry W. Parker, Port Washington, of counsel.

HOGAN, Justice.

Plaintiffs, property owners in Port Washington, in the Town of North Hempstead, have brought an action to enjoin the defendants from using certain premises as a Little League baseball field in a manner which does not comply with certain conditions and regulations laid down by the Board of Zoning and Appeals of the Town of North Hempstead by its order dated April 20, 1955. They now move for an injunction pendente lite, restraining the continued violation of these regulations until a trial of the issues can be had.

The property in question has been leased to defendant, Port Washington Little League, Inc., by defendant Metropolitan Sand and Gravel Corporation, and has been graded and laid out with four small baseball diamonds, each of which has a chain link backstop. It was necessary,

by reason of the fact that the property lay in a "Residence C" District, to apply preliminarily to the Board of Zoning and Appeals of the Town of North Hempstead for a special permit to use these facilities. A public hearing was held, as prescribed by Sec. 267 of the Town Law, at which time all objects, had the opportunity to be heard. On April 20, 1955, the Board of Zoning and Appeals, acting under the original jurisdiction conferred upon it by the zoning ordinance, granted such permit, with certain conditions and safeguards as to the type of use, the hours of use, the ages of the participants, the type of structures to be erected, and the means of traffic control.

The time to review this decision appears to have expired without action by any property owners, indicating that the conditions imposed had met with their approval. However, after a period of operation under these provisions, the Little League found them to be unsatisfactory, and upon its request, an "Amendment of Conditions as Imposed" by the Board in its Decision dated April 20, 1955, was adopted at a meeting of the Board, and issued on June 27, 1955.

This amendment extended the hours of play, provided for gates at the entrance to the field, and authorized the continuance of portable bleachers which apparently had been installed.

Plaintiffs, feeling themselves aggrieved by the alleged failure of the defendants to comply with the conditions imposed by the original order, have instituted this action whereby they seek to limit the use of the premises strictly to the conditions imposed by the order of April 20th. A temporary stay effecting this is contained in the order to show cause sized by a Justice of this Court.

This complaint alleges that written request was made to the proper local authorities of the Town to prevent the unlawful use of the premises, that ten days have elapsed since such request, that no action has been taken, and that the plaintiffs thereupon have become empowered by Sec. 258, subd. 2, of the Town Law, to maintain this action.

Defendant Little League contends that the plaintiffs' complaints are unfounded or trivial, and further, that they may not be heard to complain since they are more than 200 feet from the premises in question. This last objection is based upon Sec. 174.1 of the Zoning Ordinance, which requires that when a conditional use is sought, the owners and occupants of lands within a 200-foot radius must be notified of the application by registered mail.

[1,2] Such provision may be intended to supplement and clarify the requirements of public notice contained in Sec. 267, subd. 5, of the Town Law. It cannot, however, abridge, modify or limit such statutory enactment in any way. All persons who may become aggrieved are entitled to notice by publication in the official newspaper of the Town, and the

question of their rights and interests are not to be determined arbitrarily by a pre-cribble radius of 200 feet. No such intent should be imputed to the Town Board in adopting the ordinance in question.

The Court has viewed the premises and agrees with the defendants that the use complained of does not cause any real damage to, nor interfere in any way with the enjoyment of plaintiffs' properties. The extreme end of the field is 220 feet east of the rear line of plaintiff Babcock's land and considerably further distant from those of the other plaintiffs. It is effectively screened by trees and shrubs, and lies approximately 30 feet below the levels of Salem Lane and Birch Streets. The use of these several acres by youngsters between the ages of 8 and 12 years on weekday evenings and Saturdays, engaged in organized play, under adult supervision, on privately owned property donated to them by a public spirited corporation, is not calculated to create a nuisance or give rise to any real annoyance.

The area is one of well-kept homes and young families. The Court, during its inspection, observed many children playing on the lawns and streets. All of us are keenly aware of the current problems of juvenile delinquency. Little League baseball is a most effective aid in solving them. It is regrettable that we do not have more "Little Leagues" to care for those boys and girls who cannot participate or whose interests lie in other sports. The men and women who so unselfishly give of their time and effort should be encouraged and commended. From time to time it may well be some of us suffer slight temporary annoyance or inconvenience. That is unimportant compared with the proper guidance and training of our most important asset—our youth. In these times, when the physical and moral guidance and development of our youth is universally recognized as the obligation of every community, it is difficult to understand how a property owner can object to the conditions which were found by the Court to exist here.

[3] However, in its desire to cooperate with the Little League organization, the Board of Zoning and Appeals has attempted a short-cut which does not have the sanction of law. Any attempt at modification of the order of April 20th must follow the provisions of Sec. 267, subd. 6, of the Town Law, which requires that a rehearing be held before an original order, decision or determination shall be modified, and that such rehearing be upon notice given as upon an original hearing. It appears that the Board, upon the recommendation of one of its members who had conferred with a representative of the defendant, considered the matter ex parte and made the complained of revisions. No one was given the opportunity to be heard in opposition.

Under the circumstances, the Court has no alternative but to hold that the modifications contained in the order of June 15th are ineffective and void.

The motion is disposed of by permitting defendants to operate the premises under the conditions imposed by the order of April 20th, which would entail the completion of sanitary facilities by the addition of another wall, a roof, "and a door opening easterly". They may apply immediately in the manner provided by law, for whatever modifications of the original order they deem necessary.

HUDSON RIVER YARDS CORPORATION, Plaintiff, v. Verna C. TILLOTSON, et al., Defendants.  
Supreme Court, Special Term, Westchester County, Part II,  
June 15, 1955.

Mortgagee brought action to foreclose a second mortgage, and mortgagees set up affirmative defenses that mortgage was executed and delivered under duress. The Special Term, Coyne, J., held that evidence established that mortgage was given for a good and valuable consideration and without duress.

Judgment granted for mortgagee and mortgagee's counterclaims dismissed.

1. Mortgages C-25(6), 66(2)

In action to foreclose second mortgage, wherein mortgagees set up affirmative defense that mortgage was executed and delivered under duress, evidence established that mortgage was given for a good and valuable consideration and without duress.

2. Mortgages C-83

Where mortgagees made a payment of \$4,000 on account of mortgage indebtedness, without protest of any kind, several months after execution and delivery of mortgage, and no claim of duress was ever made by mortgagees until more than seventeen months after execution of mortgage and as an affirmative defense in mortgage foreclosure action, a affirmative defense of duress would be deemed to have been waived by mortgagees.

3. Contracts C-95(1), 13

A contract obtained by duress is not ordinarily void but merely voidable, and may be subsequently ratified and confirmed.

4. Contracts C-20(2)

A claim of duress must, to be availed of, be asserted promptly or within a reasonable time after alleged duress has ceased to exist.

generally be held by the legislative body and not by some other agency such as a planning commission.<sup>14</sup> However, some statutes may authorize a legislative body to dispense with a hearing if one has already been held by a planning commission and if there is no objection, request for public hearing or other protest.<sup>15</sup>

[c]—Need for a Second Hearing. Subsequent to a hearing on

<sup>14</sup> See, e.g., *Mortgagee v. Boron Oil Co. v. Southfield*, 18 Mich. App. 135, 170 NW2d 517 (1969). Enforcement of zoning ordinance in certain cities requires that legislative body, before determining boundaries of districts or imposing regulations, first receive final report of planning commission after a hearing by such commission, a separate public hearing may be held before the legislative body before amendment.

<sup>15</sup> *New Hampshire*, Title v. North, 106 NH 194, 212 A.2d 204 (1965) (public hearing held by planning board did not satisfy statutory requirements for hearing before legislative body).  
<sup>16</sup> *Hansen v. Examiners*. Many of the duties of a local legislative body, board of appeals or zoning commission are delegated to hold public hearings on applications for at least one of the three most common flexible zoning devices, variances, special use permits and small parcel rezonings. Among the communities in which a hearing is required are: Anne Arundel County, Md.; Fairfax County, Va.; Tucson, Arizona; Seattle, Wash.; Tacoma, Wash.; Portland, Ore.; and Eugene, Ore. See Fishman, ed., *Housing and Urban Growth*, 247-263 (Doubleday Pub. Co., 1973).

The public hearing on a rezoning is generally conducted according to procedural rules prescribed by the hearing examiner and approved by the local legislative body. The hearing is held in a "quasi-judicial" proceeding. (See note 48 *supra*.) Within a specified time following the hearing, which typically varies from five to fourteen days, the examiner is required to submit a written recommendation to the legislative body, which generally retains final authority to grant or deny the application. The hearing examiner's recommendation includes findings of fact based on the record developed at the public hearing, the actual recommendation for approval or denial of the application and conclusions and reasons for the decision. *Id.*

<sup>17</sup> *In re State Community Council v. City of Tacoma*, 18 Wash. App. 323, 369 P.2d 1143 (1977). It was held that due process considerations do not require that an advisory recommendation that a requested rezoning be approved be given a hearing. It was required that there be a hearing before the hearing examiner. The court held, however, that so long as the ultimate decision on rezoning is made by the legislative body, it was not illegal to delegate to a hearing examiner the function of taking evidence and making recommendations based thereon.

<sup>18</sup> See, e.g., *Am. Pub. Serv. Ass'n v. 9-62 04 (C)*.





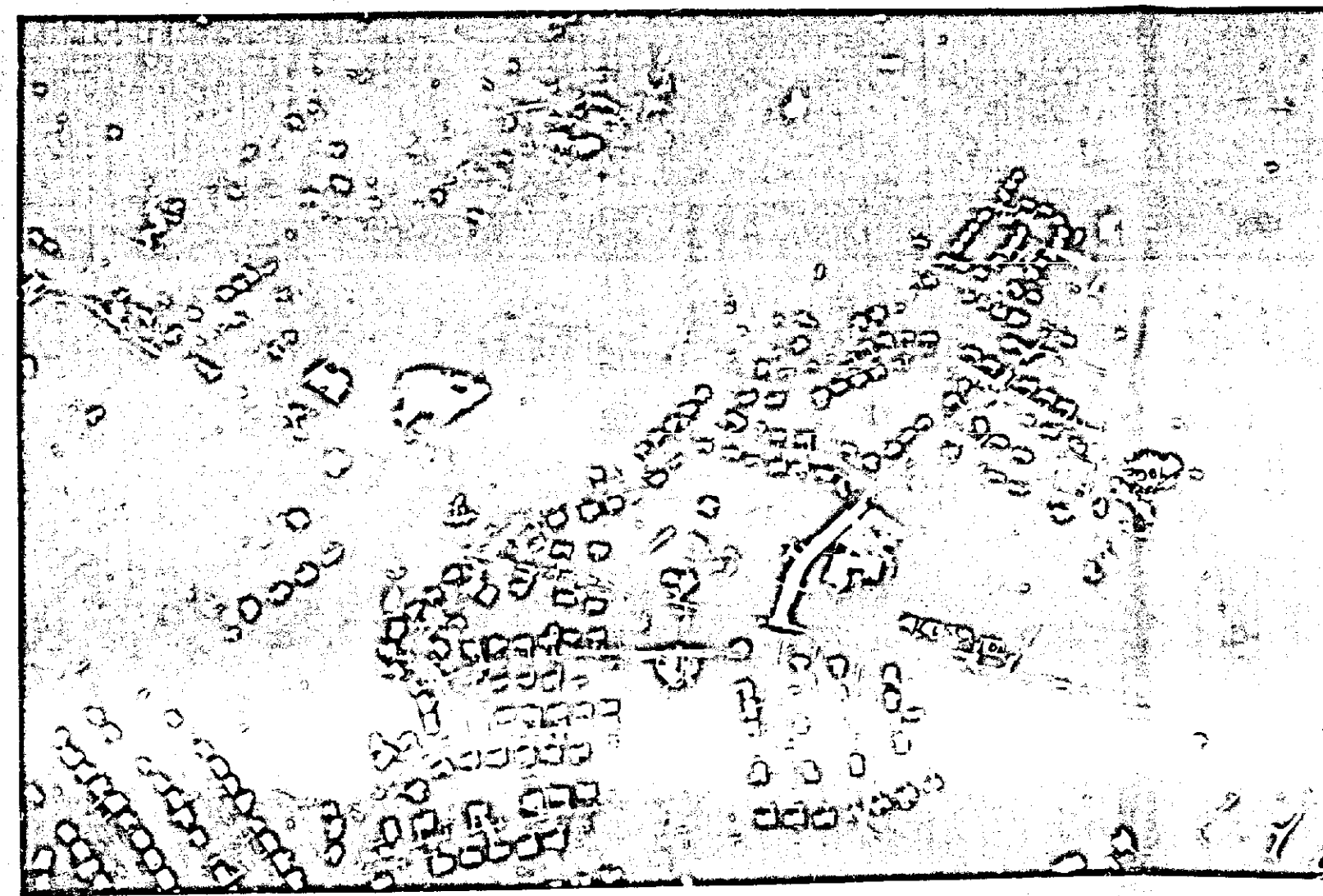














Area of Tract	4.05 Acres
Proposed Use	Rocketball Facility
Number of Courts	16
Parking Required	16 x 3 = 48 Spaces
Parking Provided	107 Spaces
Utilities :	Water - Existing
	Sewer - Existing
Zoning	DR 5.5

1. ALL SCREENING AS SHOWN HEREON TO BE 4'-0" HIGH WHITE PINES 10' ON CENTERS.
2. ALL LIGHTING SHOWN HEREON SHALL BE DIRECTED AWAY FROM RESIDENTIAL AREAS.

COMMERCIAL

COUNTY COMMISSIONERS  
2281/234

[illegible]

**SPELLMAN, LARSON & ASSOC., INC.**  
Civil Engineers & Land Surveyors  
Suite 110 ~ Jefferson Building  
Towson, Maryland ~ 21204

PERNA, JOSEPH A.  
ET AL. 5/11/65

PLAN

EX. BLOG.  
K.C. PRIVATE  
ORGANIZATION

STAGCO CORP.  
5163/316

OWNER ~ DEVELOPER

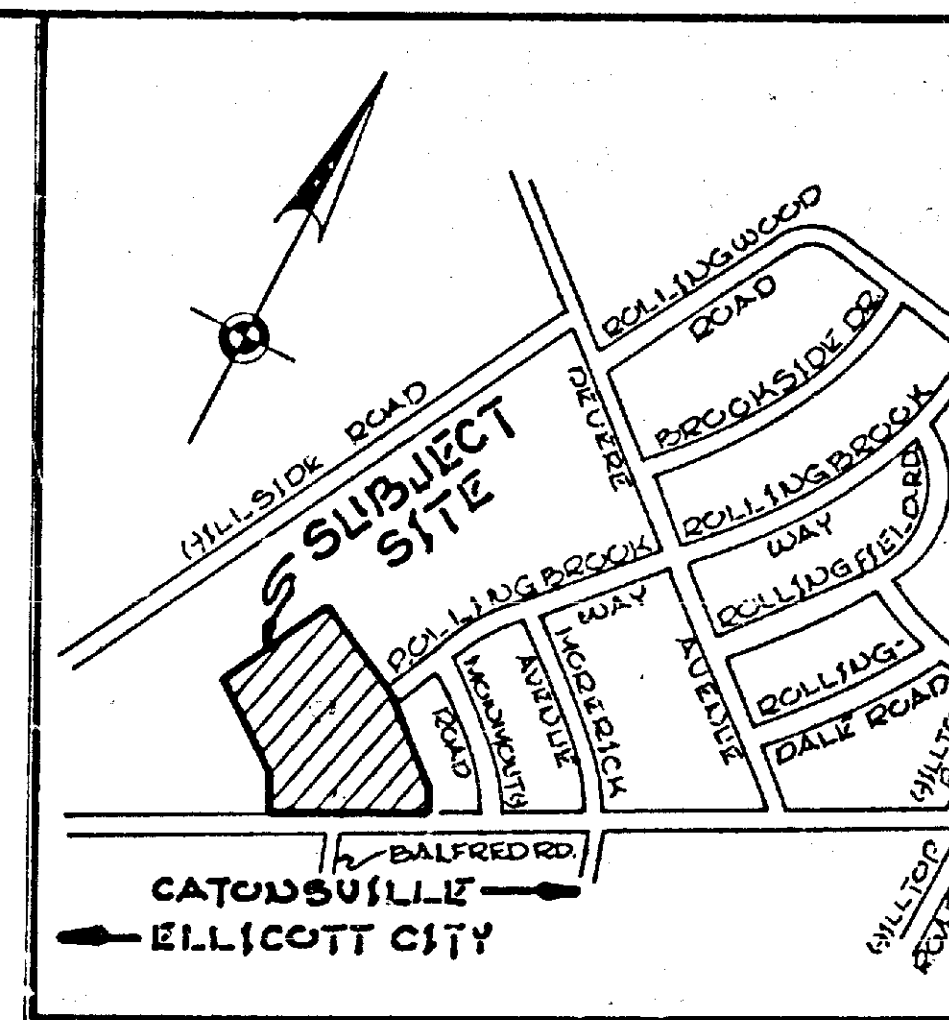
DR. DAVID RONEU  
2410 BRAMARR ROAD  
BALTIMORE, MD. 21228

CATONSVILLE  
RACQUET ~ CLUB

ELECTION DISTRICT NO.1  
BALTIMORE COUNTY, MARYLAND

SCALE: 1"=50'	DES. BY: A.W.R.	SHEET 1 OF 1
DATE: 9-28-79	DRW. BY: D.P.H.	

#79039



### VICINITY MAP

SCALE: 1" = 500'

NOTE: PETITION FOR SPECIAL HEARING  
TO AMEND SPECIAL EXCEPTION  
CASE NO. 76-260-X.

FREDERICK ULLAGE  
22/33

RECEIVED 11/13/80

PLAT TO ACCOMPANY  
PETITION FOR SPECIAL  
HEARING. | 21.....







Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of.....

the above Reclassification should be had; and it further appearing that by reason of.....

a Special Exception for a.....should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this.....day of.....197.....that the herein described prop-ty or area should be and the same is hereby reclassified; from a.....zone to a.....zone, and/or a Special Exception for a.....should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of.....

the above reclassification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this.....day of.....197.....that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a.....zone; and/or the Special Exception for.....be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County



Maryland Department of Transportation  
State Highway Administration

April 14, 1976

Mr. S. Eric DiNenna  
Zoning Commissioner  
County Office Bldg.  
Towson, Md. 21204

Attention: Mr. F. Hogans

Re: Z.A.C. Meeting, April 6, 1976  
ITEM: 195, Property Owner:  
Rescom Land Leasing Corp.  
Location: N/S Frederick Rd.  
(Route 144) 150' W Monmouth Rd.  
Existing Zoning: BL-CNS  
Proposed Zoning: Special  
Exception for community bldg.,  
swimming pool, or other land  
devoted to civic, social,  
recreational and educational  
activities (tennis barn and  
outdoor courts).  
Acres: 4.053  
District: 1st

Dear Mr. DiNenna:

The proposed entrance must have a minimum width of 25'. A 30' width is recommended. The entrance should be located directly opposite Balford Avenue.

The frontage of the site must be improved with additional paving and curb and gutter. The roadside curb is to be 24' from and parallel to the centerline of the highway. The curb is to return into the entrance on 20' radius return.

There is a 70' right of way proposed for Frederick Road (35' from the centerline of highway) that must be indicated. A second concrete curb must be constructed across the parking lot frontage, at some point between the proposed right of way line and the parking lot. The plan must be revised in accordance with the items mentioned above.

There is a stream fronting the site that must be provided for. The plan should indicate the stream and how it is to be handled.

Very truly yours,

Charles Lee, Chief  
Bureau of Engineering  
Access Permit:

John E. Meyers

CLJEM:vrd

P.O. Box 717 / 300 West Preston Street, Baltimore, Maryland 21203



Baltimore County  
Office of Planning and Zoning  
TOWSON, MARYLAND 21204  
(301) 496-3211

WILLIAM D. FROMM  
DIRECTOR

April 20, 1976

Mr. S. Eric DiNenna, Zoning Commissioner  
Zoning Advisory Committee  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item #195, Zoning Advisory Committee Meeting, April 6, 1976, are as follows:

Property Owner: Rescom Land Leasing Corp.  
Location: N/S Frederick Road 150' W. Monmouth Road  
Existing Zoning: B.L.-C.N.S.

Proposed Zoning: Special Exception for community building, swimming pool, or other land use devoted to civic, social, recreational and educational activities (tennis barn and outdoor courts).

Acres: 4.053

District: 1st

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

A turn-around must be provided at the end of Rollingbrook Way.

Screening should be provided along the rear property line and along Frederick Road.

All exterior lighting must be so arranged as to reflect the light away from residential premises.

This site appears to be part of a larger tract of land; therefore, an overall plan must be submitted for the entire property and compliance with the Subdivision Regulations will be required.

Very truly yours,

John L. Wimbley  
Planning Specialist II  
Project and Development Planning



Baltimore County  
Department of Traffic Engineering  
TOWSON, MARYLAND 21204  
(301) 496-3900

STEPHEN L. COLLINS  
DIRECTOR

April 26, 1976

Mr. S. Eric DiNenna  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Re: Item 195 - ZAC - April 6, 1976  
Property Owner: Rescom Land Leasing Corp.  
Location: N/S Frederick Rd. 150' W. Monmouth Road  
Existing Zoning: BL-CNS  
Proposed Zoning: Special exception for community building, swimming pool, or other land use devoted to civic, social, recreational, & educational activities (tennis barn & outdoor courts).  
Acres: 4.053  
District: 1st

Dear Mr. DiNenna:

No traffic engineering problems are anticipated by the requested special exception for tennis barn and outdoor tennis courts.

Very truly yours,

Michael S. Flanagan  
Traffic Engineer Associate

MSF:nc

## BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: April 8, 1976

Mr. S. Eric DiNenna  
Zoning Commissioner  
Baltimore County Office Building  
Towson, Maryland 21204

Z.A.C. Meeting of: April 6, 1976

Re: Item 195  
Property Owner: Rescom Land Leasing Corp.  
Location: N/S Frederick Rd. 150' W. Monmouth Rd.  
Present Zoning: BL-CNS  
Proposed Zoning: Special Exception for community building, swimming pool, or other land use devoted to civic, social recreational and educational activities (tennis barn and outdoor courts.)

District: 1st  
No. Acres: 4.053

Dear Mr. DiNenna:

No bearing on student population.

Very truly yours,

W. Nick Petrovich,  
Field Representative.

ALBERT H. MCCORMACK, President  
T. PATRICK WILLIAMS, JR., Vice President  
RALPH ROBERT L. BARNES

MARCUS H. ROTHSCHILD  
THOMAS H. BOYER  
MRS. LORRAINE F. CHINACUS

ROGER B. HAYDEN  
ALVIN LORICK  
RICHARD W. TRACEY, DVM.



Baltimore County  
Department of Health  
TOWSON, MARYLAND 21204

DONALD J. ROOP, M.D., M.P.H.  
DEPUTY STATE AND COUNTY HEALTH OFFICER

June 3, 1976

Mr. S. Eric DiNenna, Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item #195, Zoning Advisory Committee Meeting, April 6, 1976, are as follows:

Property Owner: Rescom Land Leasing Corp.  
Location: N/S Frederick Rd. 150' W Monmouth Rd.  
Existing Zoning: BL-CNS  
Proposed Zoning: Special Exception for community building, swimming pool, or other land use devoted to civic, social, recreational, and educational activities (tennis barn and outdoor courts).

Acres: 4.053  
District: 1st

Since this property does not have metropolitan sewer available at present, it must have approved percolation tests before final Department of Health approval.

Metropolitan water is available.

Very truly yours,

Thomas H. Devlin, Director  
BUREAU OF ENVIRONMENTAL SERVICES

RJM:pb



Baltimore County  
Department of Health  
TOWSON, MARYLAND 21204

August 4, 1976

Richard C. Whiteford, Esquire  
305 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: Petition for Special Exception  
N/S of Frederick Road, 1250' E of Hillside Road - 1st Election District  
Rescom Land Leasing Corporation - Petitioner  
MO. 76-260-X (Recd No. 195)

Dear Mr. Whiteford:

I have this date passed my Order in the above referenced matter. Copy of said Order is attached.

Very truly yours,

S. ERIC DINENNA  
Zoning Commissioner

RED/scw

cc: Mrs. Thelma Murphy  
4 Monmouth Road  
Baltimore, Maryland 21228

John W. Hassian, III, Esquire  
People's Counsel

Mr. F. T. Lammon, President  
Rescom Land Leasing Corporation  
1029 B. Paul Street  
Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL EXCEPTION  
N/S of Frederick Rd., 1250' E of Hillside Rd., 1st District  
RESCOM LAND LEASING CORPORATION,  
Petitioner

BEFORE THE COUNTY BOARD  
OF APPEALS FOR BALTIMORE COUNTY  
Case No. 76-260-X

### STIPULATION

Rescom Land Leasing Corporation, Petitioner-Appellee, and the People's Counsel for Baltimore County, Appellant herein, have entered into the following stipulation:

1. That the Petitioner-Appellee will cause to be revised its site plan entitled, "Plot to Accompany a Petition for Zoning Special Exception, Catonsville Racquet Club," dated March 12, 1976, prepared by Harrison Associates Inc., to reflect the elimination of the notations thereon indicating the location and maintenance of outdoor tennis courts, and the substitution in the area formerly occupied by said outdoor courts of open space to be appropriately graded, seeded, planted, and maintained as such, and as so amended, said plot shall be submitted for inclusion in the record in this case as, "Petitioner's Exhibit No. 1."

2. That the Petitioner-Appellee submits the comments of the Zoning Advisory Committee pertaining to this case as a matter of statute, part of the record herein, for and as its evidentiary proffer to the Board that its proposal satisfies the requirements of Section 302.1 of the Baltimore County Zoning Regulations, pertaining to Special Exceptions, and the People's Counsel for Baltimore County agrees that the criteria in said section set forth is thus satisfied.

3. That the parties mutually agree, and jointly request, that there be incorporated within any order that might issue herein the requirement that any utilization of the property here involved be made and hereafter maintained in strict compliance with the outlines and notations made and contained on Petitioner's Exhibit No. 1.

John W. Hassian, III  
People's Counsel

Richard C. Whiteford  
Rescom Land Leasing Corporation  
By Richard C. Whiteford, Attorney



## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna, Zoning Commissioner Date: June 17, 1976

FROM: William D. Fromm, Director of Planning

SUBJECT: REVISED COMMENT - Petition #76-260-X. Petition for Special Exception for Community Building, swimming pool, or other structural or land use devoted to civic, social, recreational, and education activities (tennis barn & Outdoor Courts)

Petitioner: Rescom Land Leasing Corporation

1st District

Hearing: Monday, June 21, 1976 (10:30 A.M.)

This office is concerned with the potential effect on the adjacent residential occupancies. The subject petition would appear to be a similar case to that decided by the Court of Special Appeals on Zoning Petition No. 74-28-X.

William D. Fromm  
Director of Planning

WDF:JGH:mr

## CERTIFICATE OF PUBLICATION

TOWSON, MD. June 3, 1976

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once a week, one time, on June 3, 1976, the first publication day of June, 1976, the first publication appearing on the 3rd day of June, 1976.

THE JEFFERSONIAN  
S. L. Lusk, Jr., Manager

Cost of Advertisement, \$

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 36983

DATE: September 3, 1976 ACCOUNT: 01-662

AMOUNT: \$75.00

RECEIVED: John W. Hession, III, Esquire, People's Counsel

FOR: Cost of Filing of an Appeal and Posting of Property on Case No. 76-260-X (Item No. 195)

N/S of Frederick Road, 1250' E of Hillside Road - 1st Election District

Rescom Land Leasing Corporation - Petitioner

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER  
N side of Frederick Rd., 1250' E of Hillside Rd., 1st District : OF BALTIMORE COUNTY

RESCOM LAND LEASING CORP.,  
Petitioners : Case No. 76-260-X

## ORDER TO ENTER APPEARANCE

Mr. Commissioner:

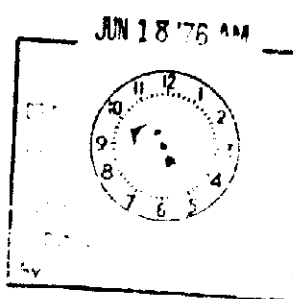
Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefore, and of the passage of any preliminary or final Order in connection therewith.

Charles E. Kuntz, Jr.  
Deputy People's Counsel

John W. Hession, III  
People's Counsel  
County Office Building  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that a copy of the foregoing Order was mailed this 17th day of June, 1976 to Richard C. Whiteford, Esquire, 305 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioners.

John W. Hession, III



BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 33412

DATE: May 25, 1976 ACCOUNT: 01-662

AMOUNT: \$50.00

RECEIVED: Messrs. Whiteford, Taylor, Preston, Frisbie and Johnson, 305 W. Pennsylvania Avenue, Towson, Md. 21204

FOR: Petition for Special Exception for Rescom Land Leasing Corp. #76-260-X

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 33479

DATE: June 29, 1976 ACCOUNT: 01-662

AMOUNT: \$25.00

RECEIVED: Messrs. Whiteford, Taylor, Preston, Frisbie & Johnson, 305 W. Pennsylvania Avenue, Towson, Md. 21204

FOR: Advertising and posting of property for Rescom Land Leasing Corp. #76-260-X

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER  
N/S of Frederick Road, 1250' E of Hillside Road, 1st District : OF BALTIMORE COUNTY

RESCOM LAND LEASING CORPORATION,  
Petitioner : Case No. 76-260-X

## ORDER FOR APPEAL

Mr. Commissioner:

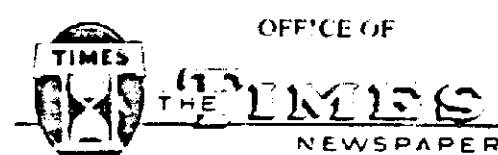
Please note an Appeal from your decision in the above-entitled matter under date of August 4, 1976, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

John W. Hession, III  
People's Counsel

Charles E. Kuntz, Jr.  
Deputy People's Counsel  
County Office Building  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 30th day of August, 1976, a copy of the foregoing Order was mailed to Richard C. Whiteford, Esquire, 305 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioners.

John W. Hession, III



TOWSON, MD. 21204 June 2, 1976

THIS IS TO CERTIFY, that the annexed advertisement of Petition for a Variance-- Rescom Land Leasing was inserted in the following

- ☐ Catonsville Times ☐ Towson Times  
☐ Dundalk Times ☐ Arbutus Times  
☐ Essex Times ☐ Community Times  
☐ Suburban Times East ☐ Suburban Times West

weekly newspapers published in Baltimore County, Maryland, once a week for successive weeks before the 21st day of June, 1976, that is to say, the same was inserted in the issues of June 3, 1976.

STROMBERG PUBLICATIONS, INC.

BY: E. Patricia Smith

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

Richard C. Whiteford, Esq.  
305 W. Pennsylvania Avenue  
Towson, Maryland 21204

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your Petition has been received and assigned for review on this 30th day of May, 1976.

Richard C. Whiteford  
Zoning Commissioner

Petitioner: Rescom Land Leasing

Petitioner's Attorney: Richard C. Whiteford

cc: Harrison Associates, Inc.  
40 Dutton Avenue  
Baltimore, Maryland 21228

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your Petition has been received and assigned for review on this 30th day of May, 1976. Filing Date: May 30, 1976.

Richard C. Whiteford  
Zoning Commissioner

Petitioner: Rescom Land Leasing

Petitioner's Attorney: Harrison Associates, Inc.

This is not to be interpreted as an assignment of a hearing date.

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 1st  
Posted for: 14 days  
Petitioner: Rescom Land Leasing Corp.  
Location of property: N/S of Frederick Road, 1250' E of Hillside Road  
Location of Sign: 1250' E of Hillside Road  
Remarks: None  
Posted by: Richard C. Whiteford  
Signature: [Signature]  
Date of return: June 10, 1976

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District: 1st  
Posted for: 14 days  
Petitioner: Rescom Land Leasing Corp.  
Location of property: N/S of Frederick Road, 1250' E of Hillside Road  
Location of Sign: 1250' E of Hillside Road  
Remarks: None  
Posted by: Richard C. Whiteford  
Signature: [Signature]  
Date of return: June 10, 1976



RE: PETITION FOR SPECIAL EXCEPTION  
N/S of Frederick Rd., 1250' E of  
Hillside Rd., 1st District  
FOR BALTIMORE COUNTY  
RESCOM LAND LEASING CORPORATION,  
Petitioner  
Case No. 76-260-X

MEMORANDUM OPINION AND ORDER

The Appeal in this case was taken by the People's Counsel for Baltimore County from an Order of the Zoning Commissioner of Baltimore County dated August 4, 1976, in which he granted, subject to certain restrictions, the Special Exception sought by the Petitioner for the erection, maintenance, and operation of a tennis barn and related facilities on the site. The case was, after notice, called for hearing. Counsel for the Petitioner, with witnesses, appeared, as did People's Counsel; no individual Protestants appeared.

A "Stipulation" signed by Petitioner's Counsel and People's Counsel was introduced and accepted by the Board. Petitioner's Counsel introduced a Plat entitled, "Catonsville Racquet Club," prepared by Harrison Associates, Inc., with revision date of September 29, 1976, which was accepted without objection as, "Petitioner's Exhibit No. 1." Parties then submitted the matter on the record and file for decision.

Upon the record and file, the Board makes the following findings of fact:

1. That the site is situated in a BL-CNS Zone and District.
2. That the Special Exception requested thereon is authorized under Section 230.13 of the Baltimore County Zoning Regulations.
3. That the comments and reports duly submitted by the various County agencies are by statute without testimony thereto evidence in the case for consideration by the Board (Title 22, Section 23.2, Baltimore County Code, 1974 Cumulative Supplement).
4. That upon review of "Petitioner's Exhibit No. 1" and the agency comments and reports, the granting of the Special Exception, as hereinafter restricted, would not

2. The hours of operation shall be between 7 a.m. and 12 midnight.
3. Approval of a site plan by the State Highway Administration, Department of Public Works, and Office of Planning and Zoning.

*H. L. Davis*  
Zoning Commissioner of  
Baltimore County

offend any of the conditions precedent set forth in Section 502.1 of the aforesaid Regulations.

5. That certain restrictions for the protection of neighboring property, the necessity being agreed to by Counsel for Petitioner, are appropriate and should be imposed.

It is, this 23rd day of November, 1976, ORDERED by the County Board of Appeals for Baltimore County that the Special Exception for a structure devoted to recreational activities, i.e., indoor tennis barn or barns, should be and the same is GRANTED, from and after the date of this Order, subject to the following restrictions, viz:

1. Utilization of the site under the Special Exception must be initially made within two (2) years from the date of this Order and must be thereafter maintained in strict compliance with the outlines and notations made and contained on the site plan entitled, "Petitioner's Exhibit No. 1," including, but not limited to, maintenance of that area indicated thereon as unimproved, bounded and enclosed generally by the N 22° 14' 13" W 253.25 foot line on the southwest, the N 22° 45' 30" E 333.63 foot line on the northwest, the S 62° 37' 50" E 104.94 foot line on the northeast, and the westmost side of "Tennis Building No. 2" as "open space" upon which no activity, including vehicular parking, is to be conducted;
2. That the property shall be screened along the said N 22° 45' 30" E 333.63 foot line on the northwest and along the S 62° 37' 50" E 104.94 foot line and the S 49° 39' 50" E 254.13 foot line and the S 27° 53' 10" E 60 foot line on the northeast with live evergreen plantings, to be hereafter maintained in healthy condition, consisting of one of the following:
  - a. White pine trees of at least six (6) feet in height planted in two rows, staggered alternately six feet on center; or
  - b. Spreading yew bushes of at least four (4) feet in height planted in two (2) rows, staggered alternately six (6) feet on center; or

Harrison  
Associates  
Inc.

architects  
engineers  
planners  
40 Dutton Avenue  
Baltimore  
Maryland 21228  
Phone (301) 744-6300

DESCRIPTION OF PART OF  
PROPERTY OF RESCOM LEASING  
CORPORATION - WEST CATON  
SHOPPING PLAZA

March 11, 1976

BEGINNING for the same on the north side of Frederick Road at the end of the seventh or South 27 degrees 53 minutes 10 seconds East 60.00 foot line of the first parcel of land described in a deed dated May 20, 1957 from Paisley T. Lemmon to Rescom Land Leasing Corporation and recorded among the Land Records of Baltimore County in Liber G.L.B. 3160 folio 11; and running thence binding on the north side of said Frederick Road and binding also on the eighth line in said first parcel South 42 degrees 06 minutes 50 seconds West 413.35 feet; thence leaving said Frederick Road and binding on the ninth line in said first parcel and binding also reversely on the third line of that parcel of land described in a deed dated April 17, 1954 and recorded among the Land Records of Baltimore County in Liber G.L.B. 2281 folio 25A from George Storz to the County Commissioners of Baltimore County North 27 degrees 53 minutes 10 seconds West 100.00 feet; thence for a line of division now made on the southwest side of lot #122 as shown on a plat of "Stonewall Park" dated November 1920 and filed among the Land Records of Baltimore County in Liber W.P.C. 7 folio 18 and running thence North 22 degrees 45 minutes 30 seconds East parallel to and distant 175 feet southeasterly from Hillside Road, and binding also reversely on part of the second line of the fifth through third parcels and reversely on part of the second line of the second parcel of land described in a deed dated May 2, 1962 and recorded among the Land Records of Baltimore County in Liber M.L.R. 3985 folio 303 from William C. Perkins to Rescom Land Leasing Corporation as now surveyed in all 333.63 feet; running thence for a line of division South 62 degrees 37 minutes 50 seconds East 192.53 feet to the beginning of the fifth or South 62 degrees 37 minutes 50 seconds East 104.94 foot line of the first parcel of the above first mentioned deed; thence binding on all of said fifth line and on all of the sixth and seventh lines of the first parcel of said first mentioned deed, the three following courses, viz: first South 62 degrees 37 minutes 50 seconds East 104.94 feet, second South 49 degrees 39 minutes 50 seconds East 254.13 feet, and third South 27 degrees 53 minutes 10 seconds East 60.00 feet to the place of beginning.

CONTAINING 4.053 acres of land more or less.

For title see the following deeds:

1. Deed dated May 20, 1957 from Paisley T. Lemmon to Baltimore, Maryland Richmond, Virginia Washington, D.C. York, Pennsylvania

- 3 -

- c. Upright yew bushes of at least four (4) feet in height planted in two (2) rows, staggered alternately three (3) feet on center;
3. That all activities on and about the premises shall be conducted indoors;

4. That no activities shall be permitted on or about the premises between the hours of midnight and seven o'clock a.m., local time;

5. That approval of a site plan by the State Highway Administration, Department of Public Works, and Office of Planning and Zoning shall be obtained before construction is undertaken and the operation and maintenance of the premises shall be continued in strict compliance therewith.

Any appeal from this decision must be in accordance with Rule B-1 to B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

*Robert L. Gifford*  
Robert L. Gifford

*William T. Hackett*  
William T. Hackett

*Herbert A. Davis*  
Herbert A. Davis

Rescom Land Leasing Corporation and recorded among the Land Records of Baltimore County in Liber G.L.B. 3160, folio 11.

2. Deed dated May 2, 1962 from William C. Perkins, et al to Rescom Land Leasing Corporation and recorded among the Land Records of Baltimore County in Liber M.L.R. 3985, folio 303.

The above described parcel of land being subject, however, to certain Rights-of-way as shown on Baltimore County Rights-of-way Plats 52-409, 53-029, 53-030, 53-031, and 53-052.

RE: PETITION FOR SPECIAL  
EXCEPTION  
N/S of Frederick Road, 1250'  
E of Hillside Road - 1st Elec-  
tion District  
Rescom Land Leasing Corpora-  
tion - Petitioner  
NO. 76-260-X (Item No. 195)

BALTIMORE COUNTY

This matter comes before the Zoning Commissioner as a result of a petition filed by Rescom Land Leasing Corporation for a Special Exception for a community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities (tennis barn and outdoor courts). The subject property is located on the north side of Frederick Road, 1250 feet east of Hillside Road, in the First Election District of Baltimore County, and contains 4.053 acres of land, more or less.

Without reviewing the evidence in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner, the prerequisites of Section 502.1 of the Baltimore County Zoning Regulations have been met. The subject property is currently zoned Business, Local (B.L.1) and, in the opinion of the Zoning Commissioner, there are uses permitted as a matter of right in this Zone that would have a more detrimental effect than the proposed use.

The Board, IT IS ORDERED by the Zoning Commission of Baltimore County, this 23rd day of August, 1976, that the Special Exception for a community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities (tennis barn and outdoor courts) shall be and the same is GRANTED, from and after the date of this Order, subject to the following restrictions:

1. Compliance with the plat, as submitted, and utilization of the Special Exception within the period of two years from the date of this Order.

September 7, 1976

Richard C. Whitford, Esquire  
104 West Pennsylvania Avenue  
Towson, Maryland 21204

RE: Petition for Special Exception  
N/S of Frederick Road, 1250' E  
of Hillside Road - 1st Election  
District  
Rescom Land Leasing Corpora-  
tion - Petitioner  
NO. 76-260-X (Item No. 195)

Dear Mr. Whitford:

Please be advised that an appeal has been filed by John W. Hession, III, Esquire, People's Counsel, from the decision rendered by the Zoning Commissioner of Baltimore County in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the Baltimore County Board of Appeals.

Very truly yours,

*S. Eric DiNenna*  
S. ERIC DINENNA  
Zoning Commissioner

SETD:ast

cc: Mr. P. T. Lemmon, President  
Rescom Land Leasing Corporation  
1029 St. Paul Street  
Baltimore, Maryland 21202

Mrs. Thelma Murphy  
4 Kennamouth Road  
Baltimore, Maryland 21228

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